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The American Political Science Review

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SOME PHASES OF THE THEORY AND PRACTICE OF JUDICIAL REVIEW OF LEGISLATION IN FOREIGN COUNTRIES

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It is no longer customary to the extent that it formerly was to maintain that judicial review of legislation and the consequent annulment of laws is an exclusively American political practice. With the courts of at least a score of countries passing on the validity of legislative acts, and occasionally refusing to apply them in concrete cases, the American method of guarding constitutions, characterized in the eighteenth and nineteenth centuries as a new political phenomenon, has now an extensive application among the countries operating under written fundamental laws.

Interesting developments are taking place with respect to judicial review of legislation in foreign countries. Austria and Czechoslovakia have established special constitutional courts with authority to determine whether acts are in accord with their constitutions.[1] Germany is in the process of adopting judicial review of acts of the national government as implied in the provisions of the new constitution.[2] According

[1] See Charles Eisenmann, *La justice constitutionnelle et la haute cour constitutionnelle d'autriche* (Paris, 1928), and Frantisek Weyr, "Le tribunal constitutionnel de la république tchécoslovaque," *Bulletin de droit tchécoslovaque* (1925-26), vol. 1, pp. 129, 132.

[2] See Carl J. Friedrich, "The Issue of Judicial Review in Germany," 43 *Polit. Science Quar.* (June, 1928) 188; Richard Grau, "Zum Gesetzentwurf über die Prüfung der Verfassungsmässigkeit von Reichsgesetzen und Reichsverordnungen,"

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to certain jurists, French courts have taken the first steps to establish themselves as the special interpreters and guardians of the French constitution.[3] Though the dominant opinion of French lawyers and statesmen is opposed to judicial review as a feature of the French system of government, there is a growing sentiment in favor of the acceptance of the principle, as a necessary means of rendering more effective the provisions of the constitution and of protecting individual rights as guaranteed in the Declaration of Rights. The Irish Free State has followed the lead of Canada and Australia in placing the guardianship of its new constitution in the courts.[4] In adopting a new constitution, Chile appears to have taken preliminary steps to change a system of parliamentary supremacy to a modified régime of judicial supremacy.[5] There is considerable public discussion in Switzerland of the possibility of accepting the principle of review of the acts of the Federal Assembly.[6]

Moreover, features of the American plan of judicial review, such as the application of the vague criteria of due process of law and the equal protection of the laws and the doctrines favorable to the protection of vested rights, which have been largely confined to the decisions of the courts of the United States, seem to be in process of acceptance in certain foreign countries. There is frank recognition today that one of the greatest problems of modern governments is the reconciliation

Archiv des öffentlichen Rechts, N. F. II, 287; and Fritz Morstein Marx, *Variationen über richterliche Zuständigkeit zur Prüfung der Rechtmässigkeit des Gesetzes* (Berlin, 1927). Marx gives a summary of the opinions of the opposing factions relative to judicial review in Germany.

[3] M. Hauriou claims that the Tribunal of Conflicts in a decision of July 30, 1873, and the Council of State in two decisions, August 7, 1909, and March 1, 1912, recognized the power of verifying the constitutionality of laws. *Précis de droit constitutionnel* (2nd. ed., Paris, 1929), 282 ff. For a different interpretation, see Gaston Jèze, "Le contrôle juridictionnelle des lois," 41 *Revue du Droit Public* (1924) 409, and Joseph Barthélemy, *Traité élémentaire de droit constitutionnel* (Paris, 1926). Cf. also Jacques Leblanc, *Du pouvoir des tribunaux d'apprécier en France la constitutionnalité des lois.* Thesis (Paris, 1924).

[4] Constitution (1922), arts. 65, 66.

[5] Constitution (1925), art. 86.

[6] Cf. *Annuaire de l'Institut International de Droit Public* (1929), 197.

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of the liberty of the individual and the interests of the public order, and that judicial review of legislative and administrative action is likely to aid in securing an appropriate and effective reconciliation of these major interests.

Though the similarities between the practices of courts in declaring legislative acts invalid in foreign countries and the features of the American system are significant, the differences between the foreign ideas and procedure and the methods and results of judicial review in the United States are of greater import. One factor which changes the whole basis and application of judicial review, as has frequently been pointed out, is the practice of many foreign legislatures to enact mainly general laws and to authorize administrative officers to issue supplementary provisions and to regulate the details of administration by ordinances. Under such a system, most of the rules and regulations affecting private rights and privileges are made by administrative officers. And over the acts of these officers either special administrative courts or the ordinary courts exercise, as a rule, a vigorous and effective control. Their ordinances, if deemed in excess of the authority granted, may be annulled, and the administrative acts may be condemned for unfairness or inexpediency.[1] Since most of the cases which arise in the United States wherein statutes are held void would arise in Continental European countries under illegal ordinances or a misuse of administrative power, the courts of these countries can check illegal or unreasonable official conduct without becoming involved in a conflict with the supreme political powers of the state. It is the review of administrative action that constitutes the chief matter of interest in the public law of Europe. The combination of the review of the constitutionality of laws and of the legality of administrative action gives the Austrian Constitutional Court an important status, and the failure to confer similar authority has weakened the position of the constitutional court of Czechoslovakia.

[1] See Raphaël Alibert, *Le contrôle juridictionnel de l'administration au moyen du recours pour excès de pouvoir* (Paris, 1926).

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The significance of judicial review of legislation is also greatly affected by the method of amendment of the constitution. Where the legislative chambers may change the constitution either by passing an amendment in successive sessions or by a greater majority, or subject to both requirements, the refusal of the courts to enforce a law may have only the effect of a suspensive veto. Moreover, a court which recognizes that its decisions can be reversed by legislative action will hesitate to decide that the legislature has incorrectly interpreted the fundamental law. The simple and direct methods of amending constitutions which are now in force in many countries will naturally limit efforts to establish an effective system of judicial review of legislation.

In view of the existing methods of legislation and administration, judicial review of legislation would be relatively unimportant in most European countries, because the primary and really effective results of such review are now secured by judicial control over administrative legislation and procedure. Though a survey of the review of administrative action in foreign countries is extremely interesting, it is necessary to turn from this important feature of public law to a more significant issue before the people of many of these countries, namely, shall judicial review of legislative acts be adopted, and under what forms shall it be accepted, or, granting that the principle of judicial review of legislative acts is already accepted, under what conditions and limitations should such authority be exercised?

Though judicial review of legislation as developed in the United States has affected the governmental structure of the country more than any other feature of the political system, little consideration has been given to the actual results which have followed from the acceptance of the legal customs and traditions involved. Despite widespread dissatisfaction with particular decisions of American courts, and with the assumption of powers by the judges believed to be unwarranted by the express language of written constitutions, it is singular that one must turn to foreign countries to find some of the

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most penetrating and thorough analyses of the results of the American system of judicial review of legislation and of the legal concepts and postulates on which the system is based. All law is based to a certain extent on postulates or assumptions, and in no phase of the law is it more necessary to evaluate postulates than in relation to the legal ideas involved in the practice of the review of legislation by the courts.

Despite the limited applications of the principle of judicial review of legislation when the principle is adopted under many constitutional systems, thorough and penetrating discussions of the nature and problems of judicial review of legislation are taking place in France, Austria, Germany, and other countries. Jurists and political leaders in these countries are advocating the adoption of the review of legislation by courts. Certain publicists, following the Hamilton-Marshall doctrines relating to judicial review, as interpreted by Judge Cooley in his *Constitutional Limitations* and by Lord Bryce in *The American Commonwealth,* favor the immediate and unqualified acceptance by the judges of the principle of judicial review as applied in the United States.

Constitutional provisions, according to this type of reasoning, are fundamental laws and should be regarded as superior to ordinary laws when the judges believe there is a conflict between a statute and the constitution. Though the judges refuse to enforce a law which they deem in conflict with the constitution, it is insisted that they do not declare a law void; they merely set the will of the people against that of their agents. In effect, the popular will is sustained. And the exercise of such authority by judges does not involve a superiority or supremacy of the judicial department over the other departments of government or over the constitution. The process of judicial review of legislation involves the exercise of judicial power only.[8]

[8] Louis Proal, "Le rôle du pouvoir judiciare dans les républiques." 56 *Revue Politique et Parlementaire* (June, 1908) 558; Gaston Jèze, "Notions sur le contrôles des delibérations des assemblées deliberantes," 53 *Revue Générale d'Administration* (May-Aug., 1895) 401, and 54 *Revue Générale d'Administration* 31,

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A well known philosopher, speaking of certain types of postulates, states that experience is allowed to confirm them but not to invalidate them; they are none the worse if events do not conform to them. Thus the mere discrepancy of experience does not refute such postulates; in fact, they can maintain themselves against an indefinite amount of hostile experience.[9] Only by recognizing a form of logic, or of reasoning, which has no relation to either facts or experience can one account for some of the postulates or so-called principles which form the background for the American doctrine of judicial review of legislation.

Though the postulates, and the fictions resulting therefrom, which are embodied in the standard arguments or explanations for judicial review of legislation in the United States are not infrequently accepted in foreign articles and treatises without critical analysis,[10] it is in these works that the defects of these arguments are examined, and that the striking discrepancies between political facts and political theories involved therein are exposed. The opposition to judicial review of legislation in Europe centers largely around three propositions. First, judicial review violates the theory of the separation of powers; second, judicial review establishes the supremacy of the judiciary; third, judicial review involves the courts in politics, with the result that acrimonious conflicts are sure to arise between the courts and the legislature or the courts and the people.

These propositions, as advanced by European jurists, may well be considered in the light of American legal reasoning and some of its implications. Whereas the doctrine of judicial review of legislation is regarded in the United States as a

154. Numerous doctors' dissertations accept and defend this method of reasoning.

[9] F. C. S. Schiller, *Formal Logic: A Scientific and Social Problem* (London, 1912), 126.

[10] Much of the discussion of judicial review of legislation in Latin American countries follows in detail the arguments or analyses found in the standard American treatises.

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necessary requirement in the application of the theory of the separation of powers, in Europe such a doctrine is generally thought to involve a confusion, and not a separation, of powers. Building on the principle that there are only two great functions of government, namely, to make and to execute the laws, and that of necessity these functions must be carried out with the closest unity and coöperation possible, the judiciary is considered as a subordinate agency of these functions operating more directly under the control and direction of the executive department. To allow the courts to check either or both of the primary functions of the state is thought to make the judges masters over all of the agencies of government.[11] Instead of establishing through judicial review, as Americans contend, a government of laws and not of men, European jurists argue that it is precisely because the law is supreme that the legislature is placed above the other powers. Supremacy must reside in one department of government, and to European thinkers both reason and experience point to the legislature as the logical depository for supreme authority.

American lawyers consistently insist that the establishment of judicial review of legislation does not involve a supremacy of the judiciary. European jurists and statesmen, whether or not favorable to judicial review, almost as consistently assert that the review of legislation by the courts necessarily places the judiciary in a position of supremacy. As these jurists see the matter, it is primarily a question of what men are to be charged with the duty of rendering final decisions, and from what class they should be selected—whether they ought to be exclusively jurists or primarily men engaged in political life.[12]

[11] The primary objection in France to acceptance of the principle of judicial review of legislative acts is, according to Jean Signorel, the French version of the theory of the separation of powers. "Le contrôle du pouvoir législatif," 40 *Revue Politique et Parlementaire* (1904) 77, 519, 525. Says he: "Such a doctrine [judicial review of legislation] is contrary not only to our separation of powers but also to the history of our institutions, our texts, and the spirit of our legislation." Cf. F. Larnaude, "L'inconstitutionnalité des lois et le droit public français," 126 *Revue Politique et Parlementaire* (Jan.-Mar., 1926) 181.

[12] "The decisive question is this. From what class should be selected the men

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Realizing that the establishment of judicial review is ultimately a question of the determination of supremacy for many of the issues of politics and law, European publicists are examining carefully the hypotheses and procedure for the adoption or extension of judicial review of legislation.

Many oppose the review of legislative acts, either by a special constitutional court or by the ordinary courts, on the ground that the judges are likely to be influenced too greatly by the exigencies of partisan politics. "To annul a law," says Professor Hans Kelsen, is to establish a general norm; for the abolition of a law has the same character of generality as to make it, being, so to speak, only the making with negative action—hence a phase of the legislative function. A court, then, which has the power to annual laws is consequently an organ of legislative power.[13]

Judicial review of legislation, it is claimed, requires essentially the exercise of political authority by the judges, and necessarily involves the judges in the political conflicts of the time. Though judges are conceded to have a limited authority to make laws where the legislative intent is not clearly expressed, this authority is expected to be limited to correcting minor defects in the law and not to be extended to the determination of important political or economic issues.[14]

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who exercise a supreme control in a country, and what should be their social training? Ought they to be exclusively jurists, or men engaged in political life? For there is a marked difference between the two classes. The traditionalist spirit is much more accentuated with the former than with the latter. We observe, then, in last analysis, a conflict between two great tendencies, which are characteristic of human actions;—on the one hand, a tendency which is conservative and traditionalist, and on the other hand, I would not call it a progressive tendency (for the question as to what is progress is not exactly determined), but a tendency to change, to seek the new." To the former class, it is observed, belong the judges, to the latter, legislators. Louis LeFur, 29 *Revue du Droit Public* (1922) 313, 314.

[13] *Annuaire de l'Institut International de Droit Public* (1929) 94, and "La garantie juridictionnelle de la constitution," 45 *Revue du Droit Public* (1928) 197 ff.

[14] The decision of a judge who acts as a law-maker "will always appear individual, arbitrary, and partial; it will not have the authority of law." J. Charmont, *La renaissance du droit naturel* (Montpelier, 1910), 189.

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Referring to the functions of the Supreme Court of the United States, M. Larnaude observes that, in addition to the determination of ordinary suits, the court speaks to the country; it discusses the most important questions of legislation and of politics. Its decisions are often dissertations or juridico-political arguments.[15]

"With our temperament and our ideas on popular sovereignty," says Signorel, "we would not permit a body composed of nine or ten judges, however capable, to hold in check the will of the Chambers—that is, of the nation itself. An innovation of this kind would not be tolerated. Moreover, the question as to how the members of this court would be selected presents insoluble difficulties. . . . . The judges are men; in giving to them the power to pass on the validity of laws, there is conferred on them a very dangerous weapon, the means for a ready participation in the political arena where they would lose very much of their authority, prestige, and freedom. In a democracy it is necessary in the highest degree to have the judiciary strong and respected, the judges being men honored for their professional attainments, their love of study, their wise moderation of desires and ambitions, independence of character, their firmness in supporting their opinions, and their pride of spirit. There is danger that these qualities would be sacrificed if the judge should be charged with the duty of examining the validity of laws, which always, or almost always, would be concerned intimately with political questions." [16]

In most European countries the rule prevails that the guardianship of the constitution belongs to the legislature, and, subject to a reversal by popular referendum or the election of a new assembly, the legislature determines the limits of its own authority and exercises control over the other depart-

[15] "Étude sur les garanties judiciaries, qui existent dans certains pays, au profit des particuliers contre les actes du pouvoir législatif," 31 *Bulletin de la Société de Legislation comparée* (Feb., 1902) 175.

[16] "Le contrôl du pouvoir législatif," 40 *Revue Politique et Parlementaire* (1904) 534-536.

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ments of government. The legislature not only exercises ordinary legislative authority, but is recognized as possessing constituent powers, or powers of an ultimate sovereign. Where this rule is accepted, a written constitution is regarded mainly as a document comprising groups of political laws which may with a peculiar degree of propriety and convenience be in charge of the political departments to interpret in the doubtful or critical cases that may arise. The well recognized dictum of American judges that there are certain questions of a political nature which the courts ought not to undertake to determine, and the settlement of which should be left with the legislative and executive departments of government, is extended so as to include practically all of the provisions of the constitution. The prescriptions of the constitution not being *laws* in the ordinary sense, as understood by judges in interpreting and applying their provisions, they cannot form the basis of a contention or case before a court. A controversy regarding the meaning of a constitutional provision is simply not a *justiciable controversy.* The basic hypotheses, therefore, on which the American constitutional structure is founded, that constitutions are laws in the ordinary significance of that term, and that a case or controversy involving an alleged conflict between a constitutional provision and a statute is necessarily subject to judicial cognizance, are repudiated as legally unsound and politically impracticable.

The claim that a written constitution with limits on the powers of government, if not guarded and protected by the judiciary, becomes a mere "scrap of paper" and is not seriously observed appears to be disproved by the experience of countries with written fundamental laws and final legislative interpretation of the constitution. The constitutions of Belgium and Switzerland, though subject to final interpretation by the legislative assemblies, have seldom been changed merely by legislative interpretation or by a refusal to obey a constitutional requirement. The experience of these countries indicates that legitimate private rights and privileges are

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likely to receive adequate protection without a judicial guardianship of the written constitution.

In dealing with the practice of judicial review of legislation, European publicists make certain distinctions which are seldom alluded to by American judges or constitutional lawyers. First, a distinction is recognized between formal and material unconstitutionality of laws. The consideration of the formal constitutionality of a law is a review of the process of enactment to discover whether the procedural requirements of the constitution have been complied with. This form of control over legislation is sometimes called a review of "extrinsic constitutionality."[17] The test of the validity of a law in the material sense involves a review of the content of the law, or what has been termed its "intrinsic constitutionality." Judicial review of the formal constitutionality of a law is regarded as incidental to the ordinary processes of litigation, and frequently when other forms of review of legislation are denied to the courts, review of formal or procedural constitutionality is accepted as a necessary function in the interpretation and application of the law by judges.

French judges claim the authority to refuse to apply an ordinary law when the formal requirements provided in the constitution are not followed. Such requirements, for example, would cover instances where a law as passed by one chamber was approved in a different form by the other chamber; or where the law was passed without following the rule as to a majority vote; or where the passage in one or both houses took place outside of the regular, legal session; or where the law was not properly promulgated.[18] It is generally

[17] For limitations of this distinction, see Hans Kelsen, "La garantie juridictionnelle de la constitution," *Annuaire de l'Institut International le Droit Public* (Paris, 1929), 65 ff.

[18] Maurice Hauriou, *Précis de droit constitutionnel* (2nd ed., Paris, 1928), 283. As to a failure to observe formal requirements which result solely from the violation of the interior regulations of the Chambers, the Court of Cassation maintains that the irregularity is covered by the promulgation of a law, and that, moreover, since the Chambers are sovereign, they can modify the procedure of their deliberations." *Ibid.*, 283, and Cass. Crim. 22, Oct., 1903. See Gaston

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recognized that German judges have similar authority.[19]

Another distinction is made between review in the form of a direct annulment of an act, such as the disallowance of a statute in the self-governing English colonies or the administrative annulment of an executive ordinance (which is a common practice in European countries), and indirect review resulting from the refusal to apply a law in the course of an ordinary case or controversy before the courts of justice. Most foreign commentators who favor the adoption of the practice of judicial review of legislation desire the introduction of the indirect form of review as applied by American judges.

Certain deductions seem to be rather generally accepted in the discussion of judicial review of legislation in foreign countries. First, it is considered almost as an axiom that the definition and delimitation of powers in a federal system of government can best be entrusted to the courts. Federalism, with a written document distributing the powers of government, Professor Dicey insisted, means *legalism*—a legalism which presupposes a judicial body to serve as an arbiter or umpire. Today, few would undertake to dispute Dicey's dictum. With judicial review of legislation operating successfully in Argentina, Australia, Brazil, Canada, Mexico, Switzerland, the United States, and Venezuela, and with its recent acceptance by Austria and Germany as a method of establishing a balance of powers in federal systems, this phase of judicial review of legislation has come to be a significant feature of modern public law.

Second, in countries which have a unitary type of government there is a distinct trend toward the adoption of judicial review of legislation as a desirable means of interpreting finally and upholding the specific provisions of the written

Jèze, in 21 *Revue du Droit Public* (1904) 17; Laurent, *Principes de droit civil*, I, sec. 3; Laferrière, *Traité de la juridiction administrative et des recours contentieux* (2nd ed., Paris, 1896), II, 8, 9; *ibid.*, "Le contrôl juridictionnel des lois," 41 *Revue du Droit Public* (1924) 422 ff.

[19] Gerhard Anschütz, *Die verfassung des deutschen Reichs vom 11 August 1919. Ein Kommentar für Wissenschaft und Praxis* (Berlin, 1926), 216 ff.

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constitution. The theories and practice of legislative supremacy are still dominant in Europe, but they seem to be losing ground. Impressions regarding the failure of representative assemblies and the decline in the confidence of former years in the devices of popular control of public affairs furnish a fruitful field for the growth of doctrines supporting the "aristocracy of the robe."

Third, there is an insistent desire to place the protection of individual rights on a more secure basis than now prevails where the practice of legislative supremacy is a postulate of public law. Whether or not constitutions contain bills of rights, strong pressure is being brought to bear upon the courts to preserve and defend the fundamental personal and private rights of the individual. The detailed provisions favoring individual rights in the new constitutions adopted since the Great War are indicative of the prevailing impressions, and they predicate a basis for judicial surveillance of government conduct which is sure to make inroads upon the doctrine of legislative supremacy. The introduction of the English and American phrases "due process of law" and "the equal protection of the law" in recent constitutions, even though limited in their applications, shows a desire to adopt as a test of legality the principle of fairness or reasonableness which is the outstanding product of American constitutional interpretation.

Fourth, the doctrine of judicial review of legislation is gaining adherents in the persistent efforts to establish and sustain the rule of law as against unwarranted and arbitrary political action. Advocates of superior law doctrines conceived as above all law and as limiting the functions of the state, such as Duguit and Hauriou, turned to the judiciary for the effective application of their higher law principles. Duguit looked with admiration upon the work of the Supreme Court of the United States because he believed that, in its espousal of higher law doctrines through "due process of law," "equal protection of the laws," and similar phrases, it was applying the rule of

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law, or *règle de droit,* for which he had contended during twenty years or more. Many jurists who are seeking a more secure basis for international law, and who find this basis chiefly in a modernized version of natural law, prefer to have the courts as the main expositors of this type of law. They, too, look favorably upon the application and extension of the practice of the courts in reviewing legislative acts.

Two tendencies are apparent in the consideration of the theories and practices in relation to judicial review of legislation in foreign countries. In the first place, the courts are to be accorded a supervisory authority over legislation, provided their decisions are confined to the express provisions of written constitutions. For courts passing on constitutional questions, "super-positive norms" of every kind, insists Hans Kelsen, must be rigorously excluded. A similar view was expressed by Raymond Saleilles, who favored the adoption of a limited form of judicial review in France, on the one condition "that it be restricted to rights which may not only be affirmed in the constitution, but also the meaning of which is strictly defined in their juridical contours and in the conditions of their application."[20] Some of those who are favorably inclined toward judicial review of legislation hesitate to urge its adoption or extension because they doubt whether judges can be prevailed upon to limit themselves to the application of the express provisions of written constitutions.

In a volume of essays inscribed to Maurice Hauriou, Edouard Lambert reviews the decisions of the Supreme Court of the United States relating to constitutional questions for a period of four years and comments on the methods by which the United States has secured what Justice Sutherland has called "a tempered democracy." In the process of judicial interpretation, as Lambert sees it, there has been engrafted, by means of the Fifth and Fourteenth Amendments, upon the political constitution as drafted in Philadelphia an *economic-judicial* constitution. Differing from Hauriou, he doubts

[20] 31 *Bulletin de la Société de Législation comparée* (1901-2), 240.

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whether it would be advisable to undertake to transplant the American plan of judicial review to French soil. He says: "Our courts of justice have accustomed themselves for more than a century to abstain from exercising the prerogative of the judiciary which resulted in the American control over the constitutionality of laws, and this absention has acquired for them the force of a constitutional custom. It is scarcely probable that they would break with this practice without being instructed to do so by a constitutional law which should, undoubtedly, give them some directions for the accomplishment of a task for which they have become unaccustomed. Would it not be possible to prescribe rules which would be less flexible than those which are recorded in our Declaration of Rights, the counterpart of the Fifth and Fourteenth Amendments to the Constitution of the United States? Would it not be possible to regulate the mechanism of a French control over the constitutionality of laws in such a way as to require the courts to open wide the door to the constitutional protection of intellectual interests, ... but also to close the door, or at least to open it only very discreetly, to the 'economic interests,' which have much less dignity and which would try to enter first? Would it not be possible to find a filter for the constitutionality of laws which would permit the passage into the sphere of super-legality of the liberty for each one to conform his life to his belief or unbelief and of all the other forms of the freedom of thought—including the liberty of political opinion for the defense of which Justices Holmes and Brandeis have so fruitlessly fought on the bench of the Supreme Court of the United States—but which would keep back in the sphere of normal legality the liberty to do business, the liberty to earn money, and so many other liberties which are sufficiently provided for—perhaps too much so—and which can defend themselves in the parliamentary domain?"

Later, Professor Lambert observed: "I still think that your control over the constitutionality of laws, in the form in which it is actually functioning in America, cannot be trans-

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ferred to Europe. But now I believe that it would be desirable to find means by which there could be organized in France a constitutional guarantee of individual rights which could function under the form that Justices Holmes and Brandeis wish to see it function, but without running the risk of taking on the form that the majority of your Supreme Court has given it. Can this ideal be realized? I doubt it. Is it not the squaring of the circle? I wonder."

In short, these authorities believe that judges may become satisfactory guardians of constitutions and of the individual rights therein guaranteed, provided their decisions are confined to the definite and express language of written instruments. But there is serious doubt whether the judges would confine themselves within these narrow boundaries.

In the second place, the exponents of superior principles, or superior laws, which are supposed to serve as guides and to fix limits for public authorities believe that their doctrines of legitimacy may preferably be left to the courts for interpretation and application.[21] Above the body of the laws, claims Hauriou, there are superior principles which proceed from the fact that law is an organized system. The body of private law contains such principles and the judges apply them daily, whether they are or are not formally expressed in the texts. Similar principles ought to be in the body of public law.

In the United States, the control of the constitutionality of laws confided to the judges has progressively developed the conception of an absolute legitimacy of the individualistic principles of the old Anglo-Saxon common law. In France also there are a number of fundamental principles which constitute a "constitutional legitimacy" placed above the written constitution and far more above the ordinary laws. Without speaking of the republican form of government, for which there is a text, there are other principles for which there is no need of a text. Though the constitution of 1875 does not

[21] Hauriou, *Précis de droit constitutionnel* (2nd ed., Paris, 1928), 268 ff.

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contain a bill of rights, this silence, which has embarrassed authors influenced by the narrow conception of a written constitution, ought not to concern us. These principles of our public liberties are in full effect as a part of the *legitimité constitutionnelle.*[22]

The control over the constitutionality of laws, Hauriou believes, should not be limited to legislative acts; it ought to extend to amendments to the constitution. The American judge is placed distinctly above the constitutional law because for him there are above the Constitution itself a group of superior principles which are a part of natural law, and which form a *legitimité constitutionnelle* to which the written constitution itself must conform.[23]

Speaking of "government by judges" as characterizing the American practice of judicial review of legislation, Duguit observes: "It is not exact. One cannot say that American courts of justice, even the Supreme Court, are truly associated with the government. It cannot be said that they exercise in a true sense control over Congress, or that they can exercise a sort of veto of laws passed by this chamber. . . . . The Supreme Court, following the expression of Larnaude, does not pass upon, to speak accurately, the process of the making of a law. It gives a decision to a particular litigant, but this decision requires that the court decide on the constitutionality of the law. Evidently, constitutionality is considered in this large sense; and the Supreme Court should not be blamed, on the contrary, for refusing to apply not only the laws which violate a written rule of the constitution but also a fundamental principle of American law. The court recognizes and sanctions a superior law *(droit)* as defining limits for all

[22] Hauriou, *Précis élémentaire de droit constitutionnel* (Paris, 1925), 82, 83. Hauriou asserts: "It is an error to believe that the *superlegalité constitutionnelle* comprehends only that which is written in the constitution; it comprehends equally other things, as for example, all the fundamental principles on which governments are founded. . . . . These principles constitute a sort of *légitimité constitutionnelle,* which has force over and above the written constitution."

[23] Hauriou, *op. cit.,* 88.

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legislation, the existence of which I have often affirmed. To their honor, American jurists are unanimous in recognizing the existence and force of such a superior law." [24]

If there are fundamental principles of the social order which condition all law-making and law-enforcement, the judges may be regarded as the chief custodians of these principles. One point of view would give the judges a quite narrow field in which to operate, and the other would grant them greater authority than they exercise in any country. But the broad judicial review which foreign commentators favor would be, so far as the review of statutes is concerned, a relatively unimportant feature of most foreign governmental systems.

The prospects for the continuance and extension of the practice of the review of legislation by the courts are encouraging for those who desire Justice Sutherland's "tempered democracy." In the United States the doctrine of judicial review appears firmly established and receives the active support of a majority of the people. Certain countries have adopted, and apply with variations due to different systems of law and diverse local conditions, the main features of the American system of review. This is particularly true of Latin American nations, some of which, such as Brazil and Argentina, are applying the traditional principles of public law which have become embodied in the American doctrine of judicial supremacy. Undoubtedly there is a disposition to accept the principle of judicial review of legislation in jurisdictions which have not thus far recognized it. The adoption of judicial review, however, is likely to result in rather unsubstantial checks on legislative powers unless fundamental changes in public law and in legal theories accompany the change. The elaborate provisions in constitutions and statutes for the writ of *amparo* in certain Latin American countries bear witness to the fact that formal legal provisions along this line may have little effect on public administration.

European practice tends to disapprove the policy of per-

[24] *Traité de droit constitutionnel* (Paris, 1923), vol. 3, pp. 678, 679.

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mitting an individual to challenge the constitutionality of an act; on the other hand, public authorities engaged in the enforcement of the law, when there is doubt as to its application in an individual case, are encouraged to apply for a ruling on the issue of unconstitutionality. Considerable use of advisory opinions on constitutional questions is made in the new German constitutional system, in order to avoid the long delays and great inconveniences resulting from uncertainty as to the constitutionality of an act.[25] And the strengthening of the judiciary is looked upon as the only means by which the German constitution will be respected and obeyed.[26]

Judicial review of legislation in foreign countries, then, is usually limited in scope by designating certain courts as the only ones before which a statute may be impugned, by restricting the procedure through which a case may arise in which the validity of a statute is questioned, by confining the attack on statutes to representatives of the government concerned, and by rendering the reversal of a judicial decision relatively easy through the course of constitutional amendments or referenda.[27]

But certain factors must not be lost sight of in an appraisal of the tendencies to accept current ideas in relation to judi-

[25] Johannes Mattern, *Principles of the Constitutional Jurisprudence of the German Republic* (Baltimore, 1928), 257 ff. According to Kelsen, the chief objection to the *l'exception d'inconstitutionnalité*, or the American plan of judicial review, is the uncertainty and the insecurity of the law which necessarily results from such a practice. *Annuaire, op. cit.*, 199.

[26] "Our republic cannot continue to exist if the power of the judiciary, as compared with the legislative and executive powers, is not given a stronger position and greater jurisdiction than heretofore. The foundations in this respect have been laid by the constitution of Weimar; they need only be developed. But the fact that our Parliament, year after year, enacts laws which change the constitution, without even realizing the changes thereby enacted, and that the executive resorts to emergency measures, for which in many cases there is no foundation in the constitution, presents a condition which should not be allowed to continue further." "German Chief Justice [Walter Simons] on U. S. Constitution," 12 *Amer. Bar Assoc. Jour.* (June, 1926) 379.

[27] For a discussion of bills to regulate judicial review in Germany, see Grau, "Zum Gesetzenwurf über die Prüfung der Verfassungsmässigkeit von Reichsgesetzen und Reichsverordnungen," 11 *Archiv des öffentlichen Rechts*, N. F. 287.

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cial review of legislation. In the first place, Canada and Australia, though adopting some of the main features of judicial guardianship of their constitutions, rejected the phases of the American plan which have given the courts the widest latitude and have called forth the highest praise of judicial censorship of legislation in the United States. When the supreme court of South Africa undertook to assert the American doctrine, the judges were severely rebuked by the legislative and executive departments; and the new constitution expressly provides for the principle of legislative supremacy in interpreting the provisions of the fundamental law. The reservation of the right to request leave to appeal to the Privy Council only slightly affects the dominant position of the legislature.

The Irish constitution makes provision for judicial guardianship of the constitution, but the reversal by the Irish legislature of a decision of the Judicial Committee of the Privy Council will probably result in an attitude of great caution on the part of judges in their attempts to check legislative dominance in Ireland.[28] A similar rebuff to the Privy Council by the Quebec legislature does not augur well when nationalist sentiment gains greater headway in Canada.[29] A decision of the Privy Council which apparently has changed the method of interpreting the distribution of powers between the provinces and the dominion has aroused an opposition which must be seriously considered in the future development of this phase of Canadian law.[30]

As the principle of judicial review of legislation has been accepted and applied in many countries, and the practice of

[28] See Wigg v. Attorney-General of Irish Free State (1927), A. C. 674, and act of the Irish Parliament, No. 11, 1926.

[29] Taking advantage of a mistake made by the Privy Council in Cotton v. King (1914), 1 A. C. 176, Quebec passed an act declaring that the provisions pronounced void by the Privy Council as indirect taxation had been and were in the future to be considered direct taxation, and hence valid under Sec. 92 of the British North America Act. See 4 and 5 Geo V. C. 11, and A. B. Keith, *Imperial Unity and the Dominions*, 375.

[30] See, "Law and Custom in the Canadian Constitution," *The Round Table*, No. 77 (Dec., 1929), 143.

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declaring acts void has become more common, it has been regarded less necessary to maintain the fictions which have characterized the adoption and development of judicial review in the United States. The contention is often reiterated that the courts do not invalidate acts, they merely decide cases; but it is no longer necessary to be so insistent on this dictum. Though the courts merely refuse to apply a law in an individual case, every one understands that further enforcement of the law is practically impossible.[31] Austrian commentators speak of an act annulled by the court as disappearing from the juridical order as if repealed by a subsequent act.

The tendencies of judges to enlarge their jurisdiction and their natural inclinations to frown upon innovations in the realm of legislation lead either to skepticism or confirmed opposition to judicial review of legislation on the part of those who wish to secure a relatively free and untrammelled carrying out of public policies in the field of law.[32] There are many

[31] See comments of Walter Simons in "German Chief Justice on U. S. Constitution," 12 *Amer. Bar Assoc. Journal* (June, 1926) 378. "An act which violates the constitution has no power and can, of course, neither build up nor tear down. It can neither create new rights nor destroy existing ones. It is an empty legislative declaration without force or vitality. . . . . As applied to this case, it began and ended as a futile attempt by the legislature to bring about a change in the law which a previous legislature had enacted." Justice Butler, in Frost v. Corporation Commission, 278 U.S. 515 (1929). Constitutional justice appears, more distinctly than other branches of law, the product of jurisprudence. The court, in reality, completes and interprets the constitution more than it applies it, in the sense that one generally attaches to this word. It does not say what the law is, it makes it. But an essential characteristic distinguishes the constitutional legislature: it cannot give an authentic and obligatory interpretation of the constitution, and it cannot decide abstractly; it can only decide concrete cases. It cannot determine general norms, but an individual, or rather a concrete, norm. Eisenmann, *op. cit.*, 216.

[32] "The system of control by the judges over the intrinsic constitutionality of laws would be very dangerous in France if the theory developed by certain modern authors concerning the constitutional character of a great number of general principles, more or less vague, were adopted. There is no law, social, fiscal, academic, or religious, which could not be disapproved by subtle judges on the ground that it violates a fundamental principle of French law [*droit*]." Gaston Jèze, "Le contrôle juridictionnel des lois," 41 *Revue du Droit Public* (1924) 421.

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who agree with Lord Birkenhead's observation that he had "become conscious of the dangerous and unprogressive conservatism of the legal profession, of its rigidity, and of its unadaptability to new and perhaps necessary and beneficial advancements." Hence the progressive and radical groups oppose the principle of judicial review of legislation; they foresee only obstructions to progress through a device which places conservative-minded judges as the chief guardians of the Constitution.

As in the period of the adoption of the American doctrine of judicial review, the anti-democratic groups are foremost among those who wish to check the enactment of the popular will into law.[33] These groups have now gained powerful allies in jurists and statesmen who believe that they see in the adoption of judicial review of legislation the possibility of the application of the principles of Magna Carta—the American and English concepts of the rule of law—to national and international life.

The thin veneer of fact which enshrouds the postulates or assumptions used as a basis for the American doctrine of judicial supremacy has been misleading to many who have had no opportunity to evaluate the modern development of judicial review in the United States. But a new school of jurists, comprising able students of comparative law, are forming more accurate judgments regarding American conditions. Either they are less dogmatic regarding the advantages of judicial review or they frankly doubt the advisability of the adoption of such an undemocratic device under existing political conditions.[34]

Foreign jurists and commentators, moreover, are not so likely, as was the custom formerly, to repeat the standard postulates and fictions of the American bench and bar. They

[33] Throughout the arguments favoring judicial review in foreign countries there is a distrust of legislatures which was characteristic of the period when the American doctrine was in process of adoption.

[34] See especially Edouard Lambert, *Le gouvernment des juges et la lutte contre la législation sociale aux États-Unis* (Paris, 1921).

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are disposed to question the advisability of vague phrases in written constitutions, which by means of judicial review of legislation may be interpreted by the judges so as unreasonably to restrain the exercise of public authority. They protest against a system which places the judiciary in conflict with the legislature on some of the most irritating questions of a changing political and economic order. And they do not wish to see established in their countries the unique combination of business men and the legal profession, as it operates in America to preserve the *status quo* and to protect business interests against public regulation and control.

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THE TEXAS-MEXICAN AND THE POLITICS OF SOUTH TEXAS[1]

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I. BELOW THE NUECES RIVER

Politics has been referred to by a recent writer as a "great game," which, it may be added, is played ordinarily, not in a political vacuum between a majority and an opposing minority, but rather by groups organized on an economic, social, religious, or racial basis, which coalesce with each other and fall apart only to make new combinations. This process may readily be seen if one turns the telescope on the national political firmament, but it cannot be understood in the minutiæ of its ceaseless activity unless the microscope be applied to relatively small localities. The state of Texas, because of its wide extent and consequent variations of social and political phenomena, presents an admirable laboratory for this microscopic method of attack. It is proposed here to apply this method to a particular political section of Texas which has recently attracted some attention.

The section referred to is that extreme southern portion of the state lying, in general, south of the Nueces River and east of Laredo, embracing thirteen counties and aggregating in area some 18,000 square miles. There are a number of reasons why it merits attention. The first and foremost is that the major element of its population is Mexican in race, but to a large extent American born. Many of these Mexican-

[1] This study is based almost entirely upon a personal investigation conducted by the writer in the region described during the past two years. The thirteen Texas counties considered were visited and a number of them studied intensively. Numerous interviews with informed persons of all classes and careful personal observations were the chief sources of information. Subsequent footnotes indicate other sources. Interviews and persons interviewed are not cited except in one or two instances, because they were too numerous and because in some instances it is inadvisable to cite names.

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Americans are descendants of the first settlers. It was rather the Anglo-American who was the newcomer. Obviously, therefore, the usual process of racial adjustment has been somewhat reversed. The American found the Mexican, and it was the Mexican to whom he to some extent adjusted himself.

A second point of interest is the fact that this section constitutes a surviving remnant of that almost vanished entity known as the American frontier. Acquired by Texas and the United States by the treaty of Guadalupe Hidalgo, it remained for sixty years beyond the path of rapid settlement and so-called Anglo-Saxon progress. Between 1850 and 1910 its population increased very gradually. Only within the past twenty years, and more particularly the last ten years, has much modern development been under way. Corpus Christi has become a deep-sea port, Laredo has benefited from an increasing trade with Mexico, and Brownsville has become the chief city in a rapidly expanded irrigation area which has thus far been extended some sixty miles west along the Rio Grande, although penetrating not far northward. Here and there over the region slower developments are under way, either because of the building of railways or of the success of experiments in dairying or agriculture. The Lower Rio Grande valley, as the irrigated section is called, has seen the most spectacular advance. There semi-arid waste land has been converted into citrus orchards and vegetable gardens and a string of bright new towns and cities have grown up. To these improved portions have come thousands of persons from other parts of Texas, the South, and the Middle West, as well as immigrants in increasing numbers from Mexico. Many of the latter, however, are merely transients, attracted by the opportunities for seasonal labor. Lastly, the region is interesting because there is being tested out a problem which recently has caused wide concern, namely, the ability of the Mexican to become assimilated.[2]

[2] See *Hearings Before the Committee on Immigration and Naturalization, House of Representatives, Hearing No. 70.1.5, February 21-April 5, 1928.*

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The political implications of such a situation will be apparent, even to one who is not in any degree familiar with the region. Here are conditions at once old and strikingly modern. Here have met the Anglo-Saxon and the Mexican, the Northerner and the Southerner, and here are to be found such varying interests as cattle raising, cotton farming, and fruit and vegetable growing, to say nothing of trade and commerce, much of which is with a foreign country close at hand. The actions and reactions of these racial and sectional elements, and of these economic interests, furnish basis for most instructive social and political studies.

II. POLITICAL ORGANIZATION AND LEADERSHIP, 1850-1910

According to the census of 1850, which was taken soon after the territory under consideration was acquired, there was a population of some 9,000 persons, largely Mexicans, most of whom lived on ranches or in towns and villages near the Rio Grande.[3] They held title to a good share of the soil in the southern part, through Spanish or Mexican land grants. By the terms of the treaty of annexation, these people were collectively naturalized,[4] but for long years they were separated from the other settlements of Texas to the north by the vast barren wastes of cactus and mesquite which lay between. All continued to keep their faces toward the towns and settlements of Mexico, which were within sight of the American bank of the Rio Grande. For the most part, they were a simple, peaceful, ignorant, herding people, scarcely conscious that their country had changed hands and that they owed allegiance to the "Colossus of the North." They had little conception of such things as sovereignty, allegiance, and citizenship. They were race conscious, no doubt, but only dimly appreciative of any conception of nationalism, and were certainly not used to local government in the American sense.

[3] *Seventh Census of the United States: 1850, Statistics of Texas,* Table I, pp. 494-5.

[4] *Treaty of Guadalupe Hidalgo,* Arts. 5-9. *Senate Executive Document 52, 30 Cong., 1 Sess.* (Washington, 1848).

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From time immemorial they had given obedience to the head of the family, but more particularly to the head or overseer of the ranch. Moreover, they were content to remain where they were. Hence, as the family grew, the additional members usually stayed on, occupying the original grant, which was held together and parcelled out in some sort of fashion, with perhaps little or no record except that carried in the head of the "old man" of the clan, where was apt to be stored also the family history. These facts are significant in view of the coming of the white-faced Americans, who were soon to arrive in some numbers.

Immediately after Texas acquired the region, it was divided into four counties, namely, Nueces, Cameron, Starr, and Webb.[5] The last three fronted on the Rio Grande and included all but 500 of the 9,000 people enumerated in 1850.[6] Americans filtered in slowly over a period of sixty years. By 1880 the counties had increased to eight and the population to 50,000.[7] Most of this growth, however, represented a natural increase of the inhabitants of Mexican extraction, together with immigration from Mexico. The 50,000 was doubled only by 1910.[8] The first Americans who came in were of all sorts; too many of them perhaps were adventurers who by one means or another wrested land from the original inhabitants when the latter could produce no parchment titles or definite boundary lines. Many, however, were not unfair and paid something like a legitimate price for the land they acquired. Some larger Mexican landholders, moreover, remained undisturbed in the possession of their patrimonies. At any rate, the land was poor and largely worthless, and much was needed for raising cattle.

[5] *Map of the State of Texas,* by J. H. Young, published by Cowperthwait and Co., Philadelphia, 1853.

[6] *Seventh Census of the United States: 1850, Statistics of Texas,* Table I, pp. 494-5.

[7] *Statistics of Population of the United States at the Tenth Census* (1880), Table II, pp. 78-81.

[8] *U. S. Census Report,* 1910, III, pp. 804, et seq.

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The cattle barons inevitably established themselves as lords protector of those Mexicans who became their tenants and ranch hands, the resulting relationship being essentially feudal. This feudalism was economic, social, and political. Not that it was usually bad; it was inevitable, and many of the landholders were benevolent patriarchs. In becoming masters they were forced to adjust themselves to the Mexican inhabitant. They learned Spanish and acquainted themselves with the Mexican's psychology, traditions, and habits. In the process, they were themselves in a measure Mexicanized. The whole relationship was natural and was not necessarily resented by those who submitted to it; most of them had never been used to anything else, either in Texas or in Mexico. But it was not a system designed to hasten their advancement. It allowed for little in the way of general education or education for citizenship. The Texas-Mexican remained a Mexican in his own eyes and the eyes of his master. He learned little of and cared less for the state or federal commonwealth to which he had become attached. Like the medieval peasant, whose conceptions of the distant king and more distant emperor must have been rather hazy, this Mexican knew only his locality. The only ruler he knew was his local chief. If he were guilty of criminal offenses or became embroiled in a dispute, the chief knew simple ways to fix things up, short of the tedious grindings of the law, which, indeed, were not much in evidence.

From a political standpoint, it may readily be seen that this inhabitant of Mexican extraction was scarcely prepared for the usual frontier type of Jacksonian democracy. Counties, of course, were established at the start, and judicial and legislative districts had to be created. Thus there were elections to be won and offices to be filled. The Mexican, knowing little about the privileges or duties of sharing in the sovereign will, and desiring only to accede to the wishes of his chief, naturally allowed his hand to be guided in marking ballots for presidential, state, and other candidates. If he was conscious

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at all of what he was doing, he was aware only of voting for his local boss. Landholders who were interested in politics could easily herd their tenants and laborers on election day and bring them in to the polling place with banners flying.

If this voting strength was to be utilized for more than local purposes, however, some form of united organization had to be effected. There were outstanding persons who were interested in partisan organization, and before long the Democratic party, at least, was well established throughout the area under the general leadership of one man. After the Civil War the Republicans were able in certain localities to divide the vote, and bitter fights sometimes ensued between the local Reds and Blues, the names by which Democrats and Republicans were known. But in the main the Democratic party, under more able leadership, established its supremacy.

Only the outlines of the history of party organization are as yet available. The early organizing genius of the Democrats seems to have been Colonel Stephen Powers, who was born in Maine and trained in the law in New York, where he became a friend and supporter of Martin Van Buren. After being in the diplomatic service for a time, Powers joined the army at the outbreak of the Mexican War and went to Texas as the colonel of a New York regiment. He seems to have become so enamored of the south Texas country that, after being mustered out at Brownsville, he decided to remain.

Here was a pasture, therefore, which appealed to this disciple of Van Buren, from whom he must have learned something of politics. In fact, the New York Democracy had been dealing politically with a non-American population since the infancy of Tammany Hall. If the sons of Irish peasants could learn to use the ballot by the short and direct method, why could not these simple and primitive descendants of the Aztecs? The methods of the teacher might have to be altered, but the principle remained the same. Not that it had to be done in a corrupt way; only occasionally had Tammany Hall itself been corrupt. Like the Irish, these people simply needed

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a friend and protector, and Powers speedily assumed that rôle. As a lawyer, he could render them assistance, particularly when newcomers undertook to occupy their land and appropriate their cattle, or, as a lawyer, he could ease them into believing that perhaps they never really owned the land or the cattle. On the whole, he seems to have dealt as fairly with both Mexican and newcomer as frontier ethics demanded, and he was able gradually to build up a tremendous influence over both Americans and Mexicans in the entire region below the Nueces. In fact, before his death he had carved out an empire of influence in which he was the dominant force. And the control thus established by no means died with him.[9]

In 1878, four years before his death, Powers made Jim Wells, at that time a young man, his partner.[10] Wells proved thoroughly capable of assuming the mantle of Powers, both in the rôle of lawyer and in that of politician, and he continued the Powers tradition and held together the Powers empire from the latter's death in 1882 until 1920, when his power was largely broken. Other leaders developed, and local politicians established control in various counties; but they owed their rise to Wells, and they kept up their allegiance to Wells until his political downfall. Wells died in 1922.

Wells's power in certain localities, and particularly in his own personal bailiwick of Cameron county, was based upon his ownership of large tracts of land. Elsewhere over the region his leadership was personal, due in part to his professional connections with certain great landholders, but also to the fact that he early made himself well known to all the old Mexican families throughout the territory, which during the greater part of his reign constituted the vast majority of

[9] This account of Colonel Powers is based upon an interview with a competent student of the history of the locality.

[10] Wells's mother's family were Northerners who had settled in Matamoras soon after its founding in 1823, where they retained their American citizenship, moving into Texas after the Texas Revolution. His father's family were Southerners. Wells himself was educated at the University of Virginia, and his sympathies and prejudices were Southern. He had lived through the Reconstruction period and was a Democrat of the old school.

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the population. These families knew him not as a boss but as a type of patriarch. They accepted him as a leader and a friend. They invited him to their social and family gatherings. He stood sponsor at baptisms; he attended innumerable weddings and funerals. The inhabitants recognized him as their supreme leader socially and politically.

Moreover, when in the late eighties a great drouth swept over the country and the people were starving, Wells was prompt to organize relief, obtaining money and help from upstate; and he, more than anybody else, was responsible for carrying the inhabitants through. This, above all other things, helped to establish his supremacy. From this time forth, his rule was thoroughly personal, and for many years it was unassailable.[11]

On one occasion, Judge Wells, as he came to be called, expressed himself at length on the nature of his leadership. "The Mexican people," he said, "if you understand them, are the most humble people you ever knew. . . . . They are largely like Indians in that respect. Their friendship is individual. For instance, you have a great many friends among them, and they would follow your name and your fortunes, and that is the way it is. . . . . I suppose they [the King ranch people] control 500 votes, and they go to the major domos, and they go to Mr. Caesar Kleberg and to Robert Kleberg, and to Captain King—while he was living—and ask him whom they should vote for. The truth is, and very few people who don't live in that country know, that it is the property owners and the intelligent people who in that way do really vote Mexicans, and that is the truth about it, and any one who has lived there can see the worth of it, and they know it." The Kings, he continued, ruled "through friendship and love. The Kings have always protected their servants and helped them when they were sick and never let them go hungry, and they always feel grateful, and it naturally don't need any buying

[11] The facts regarding Wells were collected from interviews with a number of persons who knew him or were personally associated with him.

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or selling or any coercion—they went to those who helped them when they needed help. Now you go into towns, and you find a few men that can be debauched with liquor, or what we term pulque, but you have no idea how in real truth—how completely few that sort of an element is. And then the Mexican naturally inherited from his ancestors, from Spanish rule, the idea of looking to the head of the ranch—the place where he lived and got his living—for guidance and direction. It came legitimately and naturally from Spanish rule—that idea did."[12]

When asked upon one occasion whether or not he was a political boss, Judge Wells replied in part as follows: ". . . . So far as I being boss, if I exercise any influence among these people [it is] because in the forty-one years I have lived among them I have tried to so conduct myself as to show them that I was their friend and they could trust me. I take no advantage of them in their ignorance. I buried many a one of them with my money and married many a one of them; it wasn't two or three days before the election, but through the year around, and they have always been true to me; and if it earned me the title of boss, every effort and all my money went for the benefit of the Democratic ticket from president to constable; and if that is what earned it, I am proud of it. . . . ."[13]

As 1920 approached, Wells's unified power, however, was broken. Conditions were becoming too diverse for one person to keep the whole area under complete control politically. Wells, too, was growing old. He knew the old game, but he could not cope with the new people and the improved conditions, already noted in parts of the region, to which, it may be said, he had often been opposed. He had always worked through local leaders in other counties, whose power was based upon their local control of Mexicans as was his own in

[12] *Testimony of James B. Wells, Glasscock v. Parr, Supplement to the Senate Journal, Regular Session of the 36th Legislature (Texas),* 1919, Austin, 1919, pp. 846-851.

[13] *Ibid.*

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Cameron county. The break came with his own dethronement in that county. The system continued locally, in a number of the counties, and a spirit of coöperation between the local oligarchies in important political matters continued to operate, and operates today. The time had passed, however, when one leader could dominate the whole region.

III. THE NEW POLITICAL SITUATION AFTER 1910

The decline and fall of the Wells domination coincided with the beginnings of that rapid progress after 1910 in certain parts of South Texas already noted. Into country largely populated by inhabitants of Mexican extraction came many settlers from other parts of Texas and from beyond the state, with the result that in certain counties the old ranching economy and the old system of political control based upon it were partially displaced. A population which in 1910 totaled 100,000 grew to 170,000 in 1920, and during the next eight years to 326,000.[14] During this time the number of counties was increased to thirteen. To a considerable extent, this growth was confined to four counties—Cameron, Hidalgo, Nueces, and Webb. Most of the irrigation improvements were made in the first two. From 1920 to 1928 these two counties doubled their population. Nueces and Webb counties owed much of their growth to the rapid advance of Corpus Christi and Laredo as ports. In Cameron, Hidalgo, and Nueces counties, the density of population now ranges from forty to sixty persons to the square mile, and the proportion of the Mexican element is now greatly reduced, although in every case it is still above fifty per cent. Due to the great size of Webb county, its previous sparseness of population to the square mile was not considerably changed. Both this county and the city of Laredo have a population which is seventy-six per cent Mexican. Four other counties—Kleberg, Jim Wells, Brooks, and Willacy—increased to a less extent between 1920 and 1928.

[14] *U. S. Census Report*, 1910, III, pp. 804 et seq.; *Texas Almanac* (Dallas, 1929), pp. 50-53.

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The remaining five counties of the thirteen—Jim Hogg, Duval, Starr, Zapata, and Kennedy—experienced little growth after 1910; the last three named, in fact, remained stationary and have at present, respectively, 8.2, 3.5, and 0.8 persons to the square mile.[15] The four counties last named are now the most distinctively Mexican of all. Their people are from eighty-five to ninety-five per cent of Mexican origin, and to a large extent Texas-born.[16]

Thus, in traveling from county to county, one meets with a variety of aspect and condition.[17] Strong contrasts exist even in a single county, and the Mexican element may be observed in all stages of development. The new so-called Anglo-American settlers have changed the social and political complexion wherever they have gone in any number, but in the backward areas conditions remain practically as they have been for many years. To understand the present political situation, therefore, it is necessary to analyze all classes of the population and to compare briefly some typical localities which stand out vividly in contrast with each other.

Almost everywhere, of course, one finds the older American element, who have exercised political, economic, and social control in the past and to a large extent still do so. Some of these people have been opposed to the new developments; others have encouraged them and have profited greatly by them. For the most part, however, they desire to maintain the old political order, which they can do in any county provided the Mexican-American voter remains in the majority or remains numerous enough to be used as a balance of power, and provided also that he remains loyal. These Americans have a large part of the wealth, as represented both in land

[15] *Texas Almanac*, pp. 50-53.

[16] The land is also held largely by persons of Mexican origin. In Zapata county, ninety-eight per cent is so held; in Starr county, eighty-nine per cent; and in Duval county, eighty per cent.

[17] The few towns in the backward counties are distinctively Mexican. Zapata, the county seat of Zapata county, was founded in 1770, and English is scarcely understood there. All of Zapata county's officers are of Mexican extraction.

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and in the newer types of investment. They know the ways of the country by long experience; and, above all, they know the inhabitants of Mexican extraction, the great majority of whom are still attached to them by many very definite ties. These "old timers" also know the peculiar Mexican psychology, and thus can retain by love, respect, or fear, or a combination of all three, the allegiance of that element.

In the less developed counties, where the inhabitants are mostly of Mexican extraction and where the land is still held by a few owners, the old order continues largely intact. These counties are in essence pocket boroughs in which local and state primaries and elections go almost to a man in favor of one faction or party. Occasionally, of course, in such counties the leadership has been divided and a division of the so-called Mexican vote has resulted. But such a situation has seldom continued for any length of time. Either the rival leaders have formed permanent coalitions in a peaceful fashion, or, as has been true in a number of instances, political antagonisms have led to violence at elections, with the result that sooner or later one faction was successfully silenced. In the more developed counties, furthermore, there are still many voting precincts which are almost exclusively Mexican, and recent instances might be cited of their returning a solid vote for a particular ticket.[18] Thus, tremendous power still remains in the hands of a few—a condition which, if the few be unscrupulous, is obviously dangerous. It may be said, however, to the credit of most of the wielders of such power that their motives have not been corrupt. The paternalistic note is dominant.

The outsider who hears of this political situation for the first time, and also the new settler, is prone to condemn it. But as one intelligent and rather philosophical Mexican-American expressed it in a conversation with the writer, in which he referred to the county oligarchy: "This crowd understands the Mexican-American psychology far better. What

[18] *Supplement to the Senate Journal, Regular Session of the 36th Legislature,* (Texas) 1919.

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may the Mexican-American expect from the new Anglo-Saxon settler? He doesn't understand him; he has scarcely visited his little old towns; he looks upon him as ignorant—perhaps *Mexican*. In fact, he fails to distinguish between Mexican citizens and Mexican-American citizens on the one hand, and also between classes of Mexicans. Judging by the way the best live in the country, at least the material standards of all are lower than those of an Anglo-American working man. But there are class feelings and class distinctions among them, and much native intelligence which, with a better sort of education, suited to them, could be developed." The new people, the same witness went on to say, have in many instances, because of their prejudice or ignorance, subjected the Mexican to indignities and discriminations of which the older Anglo-American element would not think. There are many incidents also, he contended, of Mexican-Americans being tricked into signing away their land by the new promoters. The old crowd, while controlling them and treating them harshly at times, has none the less protected them; and our informant concluded that if the politicians of the old school can only learn a little more of the technique of "intelligent bossism," they may hope to retain their political control.

No doubt, in most instances the recently arrived Anglo-Americans of whom this man spoke, and who are concentrated in the improved areas, were persons of moderate circumstances where they previously dwelt. They were induced to migrate by visions of making their fortunes—visions in many instances implanted in their minds by aggressive land agents. Their immigration has built up the country, and some have accumulated worldly goods. Many, however, particularly in the irrigated area, have been hit by high taxes, have been heavily in debt for their land and improvements, and have occasionally suffered from adverse weather conditions and consequent bad crops. In the main, these new settlers carried with them the traditional ideas of local government and politics found in such states as Minnesota, Iowa,

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and Kansas. To be confronted, therefore, with the form of political control existing in South Texas at first dazed them, and, then, as misfortunes multiplied, disgusted them. They began to talk about county rings and to condemn the Mexican-Americans as ignorant tools in the hands of bosses, who thereby were able to perpetuate their tyranny.

During the last two years, the newcomers in Hidalgo county have been engaged in a bitter struggle to wrest the reins of power from the alleged county ring and to destroy the old régime root and branch. This so-called ring, they contend, is dominated by one man, who has been in power for twenty years because of the support of Mexican voters, and who inherited his power from a former henchman of the Wells régime. They allege, moreover, that this political power is corrupt—that it has exhausted the credit of the county and mortgaged its wealth for generations to come by making reckless issues of bonds and warrants, much of the proceeds of which have gone into the pockets of allegedly unscrupulous contractors, after a comfortable graft had been divided among the county office-holders. They further charge that by a series of boldly executed corrupt practices which involved the Mexicans, the county administration stole the election of 1928 from the Citizens' Republican League; and since that date this organization has used every known political and legal device to "turn the rascals out," even going to the length of a congressional investigation.[19] The details of this struggle cannot even be sketched here. Suffice it to say that thus far no important change has taken place.

This rebellion is by no means the first to be attempted in Hidalgo county. It is rather the latest and most vigorous of a series of movements running through the last decade. Nor is Hidalgo the only county of the thirteen where the new-

[19] The results of this investigation by the Select Committee to Investigate Campaign Expenditures are contained in *House of Representatives, 70th Cong., 2nd Sess., Report No. 2821,* pp. 1-333. The hearings held in McAllen, Texas, November 26-28, 1928, were attended by the writer.

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comers have attempted revolt. As one very well-informed citizen observed to the writer, "these newcomers have in every part of Texas objected to the old régime. A fight similar to the present one in Hidalgo county has taken place at one time or another in many counties. Such is inevitable and a part of the growing pains—this duel of the newcomer versus the 'old timer.'" In most of the thirteen counties the Mexican voter holds the balance of power. Sometimes his vote can be divided. In Cameron county conditions have attained somewhat of an equilibrium. In Neuces county some years ago there was an acute struggle. There the Mexican-American had been controlled by the old ranch influence. To some extent the newcomers were able to divide his vote and break the ancient power. In one or two counties, no one group can control long. Any capture of local offices is dependent upon combinations.

Such political fights have not usually been accompanied by charges of corruption as was the case in Hidalgo county. Such corrupt practices as exerting undue influence on Mexican voters, giving them illegal assistance in voting, paying their poll taxes, and voting the alien Mexican have no doubt been rather common. Ballot boxes also are occasionally stuffed or returns tampered with. But where all factions alike are not particularly opposed to such practices, they are not likely to be made public issues. Furthermore, outright and persistent charges of gross mismanagement of public business, such as those now being made in Hidalgo county, have not been as common as might be imagined. Beyond being careless, and at times rather reckless, the old régimes have not generally, and as a matter of policy, squandered public money. It is, of course, true that, backed by the presence of large blocks of docile voters, an unscrupulous political oligarchy could work havoc in a county. On the other hand, results even more disastrous might ensue if a selfish combination of newcomers should rise to power.

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IV. THE MEXICAN-AMERICAN VOTER

For some years to come, even in the populous counties, the citizen of Mexican extraction will continue to possess the votes, and elections will be won or lost depending upon how he votes. Inherited traits, economic status, and political lessons learned during the long years of old-fashioned political tutelage cannot be sloughed off in a moment. In the backward counties, old conditions are likely to survive long. In the other counties, however, there are signs of a new understanding of the significance of citizenship.

Of course there have always been classes among these people. In old border towns like Laredo, Rio Grande City, and Brownsville—in fact, over all South Texas—there has always existed a relatively small class which possesses strong traditions of family and culture originating no doubt in Spain. Many of these people show an admixture of Spanish and Indian blood, though with Spanish traits predominating. Some have large holdings of land, have entered business and the professions, and have intermarried with families of the other race. While they tend to be conservative and to perpetuate their Mexican or Spanish traditions, they have always been conscious of their American citizenship, and enjoy relations of equality with Anglo-Americans. In several counties where the older conditions prevail, they have always had a large share in political control. In one of these counties, complete control is even now in the hands of one family of this character, members of which own most of the land and control a good share of such business as is done. Their rule remains essentially that described as existing among the earlier Anglo-American landholders. The founder of what amounts to a dynasty there, and who ruled under the general direction of Judge Wells, is now dead; but while he lived, he remained a patriarch to the Mexicans on his lands. His power may now be said to be held in commission by his sons, and continues to be based upon their control of their tenants and workers; and it embraces every phase of life. There is something of an opposition on

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the part of a handful of Anglo-Americans, who own the lesser part of the land, and some Mexican-Americans have recently been attempting to resist the county government, most of the offices of which are held by persons of Mexican extraction. This county is somewhat exceptional, but it is interesting as illustrating the spirit of the higher type of old-fashioned Mexican-American, who, where he possesses such control, is naturally not interested in changing conditions.

There is, however, another class of Mexican-Americans, above the lowly Mexican inhabitant, which is at present developing in the newer towns. Moreover, it also embraces many smaller Mexican-American ranch and farm owners in the country which surrounds these towns. This class may be designated as the new middle class, and, while still small in numbers, it is asserting itself in no uncertain terms. It has been recruited in part from among the old upper element, but more extensively from the more able and aggressive sons of the lowly class. These people have learned from the new settlers and the new conditions. Exceptional boys of Mexican extraction have migrated to the towns, have profited by the superior schools found there, have set themselves up in business, and in some instances have gone into the professions. They are found chiefly in the *Mexiquitoes* of these towns, because race prejudice or their own inclination keeps them there. But their houses, their places of business, and their standards of living compare favorably with those of the other race. They retain a keen respect for their Mexican background, but are acquiring even a keener respect for their status as American citizens. They deeply resent the discriminations which they have to bear, and some of them are fired with a desire to improve the status of their racial brothers who are less fortunate.

Recently a number of this element, anxious to secure their own rights as citizens and to educate and help others of their race, have organized themselves into a League of United Latin-American Citizens. This association at present has twenty local councils, most of which are located in towns and

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cities in the area under consideration. A full history and description of the purposes and achievements of this league will be found in another article by the present writer.[20]

Suffice it to say here that the organization has exerted a profound influence on Mexican-American citizens throughout the region, and that its chief aim is to serve as a nucleus of enlightenment for all Mexican-Americans in matters of citizenship and voting, to fight locally to break down racial discriminations, to secure by political means adequate representation for Mexican-Americans in public office, and to bring about changes in public policy to the end that the Mexican-American may derive his just due from government.

That this league has already accomplished something in the way of tangible results cannot be doubted. In most instances, politicians have not questioned its right to operate, and in some cases they have courted its favor. In certain localities the new American element is only now beginning to appreciate its possibilities in political directions. The League is evidence of the fact that the intelligent Mexican-American proposes to stand on his own feet and will refuse to be used as a political pawn by any faction. It is opposed to any sort of herding of Mexican-American voters. Whatever the organization may eventually be able to accomplish, it is an indication of an awakening spirit among the newer element.

Beneath all other classes in status, stands, of course, the bulk of the population of Mexican extraction, who, in the country at least, continue to live and behave much as their ancestors did. On the whole, they are docile, law-abiding, and apparently content to lead a primitive existence. They know little English, and, except in the better towns, the schools in which their children are usually segregated are as a rule miserable. No one in authority is particularly interested in their education and improvement. They submit to indignities

[20] "The League of United Latin-American Citizens; A Texas-Mexican Civic Organization," *Southwestern Political and Social Science Quarterly*, pp. 257-278 (Dec., 1929).

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and social discriminations which in some localities, particularly where there are large numbers of newly arrived Americans, are very marked.

Many of this class, even though born in Texas, have little realization of their status as American citizens. They are aware of being "Mexicans," which is a matter of race consciousness, but they have only a meager understanding of the significance of citizenship. Regardless of the fact that many rendered valiant service during the World War, the war experience demonstrated that not a few who were born in Texas did not consider themselves American citizens. In some cases this attitude may have flowed from the motive of self-preservation rather than from ignorance; but undoubtedly many were actually confused. Similar confusion is also frequently in evidence when it comes to voting. There seems to be little doubt that many aliens are allowed to vote in every election; and however much this situation may be ascribed to corrupt motives on the part of politicians or election officials, it is also due in part to the voter's misconception or ignorance as to his own status.

One Mexican, who under oath admitted having voted in a Texas election, offered the following information concerning himself. He stated that he was born in the Mexican state of Tamaulipas and had not been naturalized in the United States. "If I am not a full-blooded American citizen," he went on to say, "I think I have the same right to vote here, because I was very young, only about eight years of age, when I came to this country, and I have been living here ever since and have been paying taxes all that time." It may be added that he could neither read nor write English and had, nevertheless, served as an election judge under an election law which required English to be used in the voting procedure. This man, in addition, made the statement that if the United States were at war with Germany he would consent to serve in her army, but if she were at war with Mexico he would remain neutral, because, being of Mexican race, he would be compelled to re-

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spect his ancestors and his country.[21] This case is mentioned because it undoubtedly illustrates attitudes held by a great many of these people.[22]

Bearing in mind, therefore, the personal and group traits and the attitudes toward citizenship of average Mexican-Americans, their political behavior is easily explained. It is the common testimony of informed persons of all political persuasions that they have little or no conception of politics in the American sense. Friendship or fear largely impels them when attempting to use the suffrage. Voting has little or no significance beyond returning a favor to somebody higher up to whom they owe employment, money, personal attention, or something else. They recognize some local politician as their political chief. When election time comes around, in many instances they receive poll-tax receipts by mail or otherwise. Some kind benefactor has paid the poll taxes. Carrying these receipts to the polling place, they are addressed in Spanish by an election judge who may be aware ahead of time how they have been advised to vote. The ballots are printed in English. Therefore the judge kindly offers to mark the ballot properly, if indeed he has not already done so to save time. If it happens to be a presidential election, he will ask first the choice of the voter for the office of president. The answer will be Mr. X (the local county leader). When the governor's place is reached on the ballot, the reply is the same, and so on down the list to the office of constable. There is simply one political personage in the voter's mind, and he is the local chief.[23] In former days it was not uncommon for the chief or some of his local henchmen literally to corral the voters several days before the election, keeping them together by providing a barbecue for them, and voting them *en bloc* at the

[21] *Supplement to Senate Journal, Regular Session of the 36th Legislature* (Texas), 1919, pp. 297-301.

[22] *Ibid.*, pp. 25-1008; *House of Representatives, 70th Cong., 2nd Sess., Report No. 2321*, pp. 295-299.

[23] Extensive information relative to these practices may be found in *Supplement to Senate Journal, Regular Session of the 36th Legislature* (Texas), 1919.

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proper time. While such practices have been rare in recent years, it remains true that "Mexican boxes," particularly in the country, return practically a solid vote for the dominant ticket.

Among the somewhat more sophisticated Mexican-American voters, particularly in the towns, the process is not quite so naïve. But here, too, with many the purely personal conception of politics no doubt still prevails. The voter is apt to be reminded by the ward or precinct boss, by his employer, by some money lender to whom he is indebted—in fact, in countless ways—that he would better vote a certain ticket. "The tendency of Americans and of others of his own race," testifies an observing Mexican-American who lives in a town of some size, "is to 'fix things up' for him. He is often dependent; he goes to some American or some member of his own race, as to a patron, for protection, for information, or to get help in any sort of legal entanglement. He may at times be ill-advised and handled in a cavalier fashion and taken advantage of by lawyers, judges, and supposed friends. However, help from protectors he remembers, and consequently he becomes entangled in obligations to others which cause him to be 'used' politically."

Indeed, all of the useful machine methods are employed—methods of a more complicated and urban character. In some towns the system is highly organized, in others not; but that this newer "bossism" is fairly prevalent can hardly be doubted. Machine workers operate in the Mexican quarters of the towns much as they do elsewhere in the United States. When election time comes, they begin to "buttonhole," influence, persuade, or put pressure upon persons to support the town or county administration. Much of the work is done quietly in street conversation. As a Mexican-American informed the writer, "fear and ignorance may be the controlling 'machine' forces in country village, or on ranches, but the city dweller, better educated and informed and with some degree of prosperity, reasons things out somewhat. He may

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say to himself that his assessments may be raised unless he supports Mr. X; that another crowd in office may not understand him as well; that his business may be hurt if he votes otherwise than as he has been advised. He is now let alone, he thinks, and gets along pretty well; hence why venture into the untried?''

Control is sometimes exercised by appointing intelligent Mexican-Americans to non-elective and less important county and city offices, ranging in importance from such positions as that of deputy sheriff or deputy county clerk to that of janitor, street sweeper, or garbage collector. Such job-holders are selected because of their ability to deliver the votes of their families and friends. These men, for the most part in cities, are the lieutenants and sub-lieutenants of the political leaders.

Regardless of such practices, there is indication of something different for the future. In the urban communities, in particular, ''the younger generation,'' as one Mexican-American expresses it, ''though still timid, are the products of a better education—they are beginning to think for themselves, and the time will inevitably come when newcomers, dissenters now in the old régime, and enlightened Mexican-Americans may rise to establish themselves.'' In such centers of population, the hopes of the newer element for a development of Mexican-American leadership may more nearly be realized. It might seem a well-nigh insuperable task to instill in the rank and file of these people new conceptions of citizenship; nevertheless, that they possess the potentiality of measuring up to the general average of citizenship prevailing among other Americans may be demonstrated by many concrete examples.

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THE ATOMIC THEORY OF SOCIETY

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In few affairs is political wisdom so put to the test as in the treatment of institutions that are growing old. Age in these cases has little to do with mere antiquity: the forms of social life are subject to no set term of years. It is a matter of continuing adaptability. Some institutions, like the British monarchy, possess this attribute in an astounding degree. Others, like the House of Lords, betray a hardening of the arteries that bodes ill for their survival in times of rapid change. For the speed of social change affects not only their physical and conceptual environment; it acts also upon, and through, the temper of the politicians and the public. In such periods society will sometimes administer a sudden *coup de grâce* to its more recalcitrant institutions, abolishing at one stroke both the abuses they have inflicted and the garnered wisdom they enshrine. The loss involved in these moments is seldom evident until long after, when it has to be made good *ab ovo*.

To such moods the Gallic genius is peculiarly liable; and it was in one of them that the French crashed open the gates of the nineteenth century and nailed the atomic theory of society to the lintel. "There are no longer any guilds in the state, but only the private interest of each individual and the general interest. No one may arouse in the citizens any intermediate interest, or separate them from the public weal by corporate sentiment."[1] In the time and place, le Chapelier's famous declaration to the Constituent Assembly of 1791 sounded like a triumph of liberty, the climax of half a century's agitation by the pioneers of economic freedom. Yet the policy to which it led became, first in France, then in

[1] Pic, *Traité élémentaire de législation industrielle*, III, 4.

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England and America, the last resort of a reaction almost as stubborn as that which it had vanquished; and it is likely that in another fifty years the period of individualism will seem a temporary aberration in the tradition of social polity, a brief and dogmatic *excursus* into regions from which only retreat was possible.

The movement arose in direct response to two types of oppression: the Colbertian policy of minute state regulation of economic life, and the still more onerous restrictions of the guilds. Apart from the deadweight of the Court—with which not even he could cope—Colbert was following the Tudor example about a hundred years too late. And in extending, as part of this policy, the régime of the guilds he was riveting upon commerce and industry a tyranny that was, even in 1673, well nigh intolerable. Colbert himself, Turgot says,[2] had been confronted with the demand from the merchants, *Laissez-nous faire.* By the time Turgot took up that cry, it had behind it not only another century of mismanagement and oppression, but a reasoned body of theory in which all the arguments of individualism had been stated and developed.

Turgot's attack on state regulation proceeds from both general and specific grounds. Against even the most benevolent paternalism he adduces the principle of self-interest: "since men have a powerful interest in the good you propose to procure for them, let them alone—*laissez-les faire: voilà le grand, l'unique principe.*"[3] Two years later (1759) he returns to the assault. Attributing to Gournay sentiments obviously his own, he professes amazement at the restrictions on productive enterprise. A workman who produces a piece of cloth, he argues, adds something to the real wealth of the nation. Even if it is not perfect, it may find a buyer to whom it is just suited. Why all this furor about sizes and standards? Let people look after themselves. "A man knows his own

[2] *Éloge de Gournay,* Schelle, *Oeuvres,* vol. i. (Refs. are to Schelle's edn., throughout.) See also Higgs, *Physiocrats,* p. 67.

[3] Article *Fondation: Oeuvres,* vol. i.

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interest better than somebody else to whom that interest is quite alien."[4]

The attack on the corporations starts from ground conceded by their partisans. That there were abuses and a real need of reform, even the Six Companies of Paris, and their spokesman in the Parliament of 1776, admitted. An enquiry into the affairs of the guilds had been started in 1716,[5] and there had actually been half-hearted reform movements before Turgot's time.[6] But the extension of the system by successive royal edicts had not been accompanied by an adequate supervision of their rules and practices. The vested interests of the Court and the royal exchequer stood in the way of drastic treatment—despite the fact that by the middle of the century the guilds were rapidly becoming bankrupt under the royal exactions. Neither the public nor the crown, said Turgot, had really anything to gain by their continued existence: "I do not think anyone could seriously and in good faith maintain that these societies, with their exclusive privileges, and the obstacles they put in the way of enterprise, incentive, and technical advance, are of any use whatever."[7]

In this contention Turgot undoubtedly had the support of the small bourgeoisie everywhere, as well as of the whole group of economists. The decline of agriculture and the pressure of the abominable tax system were rendering life increasingly precarious; the rural population was drifting to the towns, as it has in almost every economic crisis of France; and the restrictions upon the chance of earning any sort of a living were being forced into the foreground of popular discontent. The celebrated manifesto of Bigot de St. Croix, in addition to the usual charges, stresses the effect of guild monopoly on the cost of living. "Once a man has got the exclusive right of selling me this or that article, he becomes

[4] Schelle, *Oeuvres*, vol. i.
[5] St. Léon, *Histoire des corporations de métiers*, vol. 6, p. 3.
[6] See Henri Sée, *La France économique et sociale au XVIII siècle*, ch. 6.
[7] *Mémoire: Oeuvres*, vol. v.

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from that moment the dictator of the price; I have to submit to his terms. Once a regulation forces me to employ a particular workman, he charges me what he likes. Give me back my freedom, and the monopoly is at an end."[8] The whole case against the guilds is summed up in a tremendous peroration prefixed to the edict of abolition—the denial of opportunity to the mass of willing workers, the rigid exclusion of women, the technical obscurantism and social parochialism, the enhancement of the cost of living by all sorts of arbitrary fees and charges levied on the workmen, the everlasting quarrels over jurisdiction, the effective maintenance of a pitiless plutocracy.[9]

So far, so good: it is in the reasoning by which a general principle was extracted from this specific situation that the historic interest principally lies. In Turgot's abortive policy of 1776, as well as in its resurrection by the Constituent Assembly fifteen years later, the harsh and doctrinal tendency stands out clearly; and it is impossible altogether to exonerate him from some of the charges levied against the encyclopædists and physiocrats. From their worst faults his practicality and common sense saved him: he was more intent on getting things done than on theorising about them. As Voltaire said:[10]

> A Turgot, je crois fermement;
> Je ne sais pas ce qu'il va faire,
> Mais grâce a Dieu, c'est le contraire
> De ce qu'on fit jusqu' à présent.

The extreme character of the 1776 legislation is not entirely the result of doctrinaire thinking. As a practical statesman, Turgot may well have felt that the counter proposals of reform brought forward by his opponents were hopeless in the circumstances. In view of the nature of the opposition, he

[8] St. Léon, *loc cit.*

[9] Text in *Oeuvres,* vol. 5. Complete trans. in Shepherd, *Turgot and the Six Edicts.*

[10] Quoted in *Oeuvres,* vol. 5.

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could not afford to temporize; the prompt suppression of their reply to St. Croix's pamphlet shows this clearly. In fact, he seems to have realized that the fate of the monarchy itself might depend on drastic action, and—if a remark of the elder Mirabeau is to be trusted—to have come in the end to despair of that institution. Further, he had never been drawn very far into the a priori theorising of the Physiocrats. His use of the natural harmony theory, for example, is mostly confined to specific instances where the case for liberty could be empirically established on the facts. His application of the doctrine of natural rights is, on the whole, similarly specific. His assertion of the right to work (*droit de travailler*) against the corporations goes nowhere near the danger point of 1848—Louis Blanc attacked him for it.[11] He was, in fact, well aware of the dangers of political sectarianism, and had more than once criticised the "sectarian attitude" and "fanatical tone" of the economists.[12] "As soon as savants surrender themselves in pride to constitute a body and say 'we,' and believe themselves able to give laws to public opinion, thoughtful public opinion revolts against them, wishing to receive laws from the truth only and not from authority.'"[13]

The school with which Turgot would never quite identify himself certainly lay open to the implied censure. De Tocqueville, in a very bitter passage,[14] contrasts the intellectual arrogance of the French liberals with the pragmatic moderation of the English and Americans. The work of the former, he says, is supposed to rest on an adoration of the human reason; but in truth it was merely their own reason they adored. It is interesting to note that this criticism was also a contemporary one: Schelle gives a lively example of it, emanating from the court party in 1776.[15]

[11] In his *History of the Revolution.* See Léon Say, *Turgot,* ch. 8.
[12] Say, *op. cit.,* ch. 3.
[13] Shepherd, *op. cit.,* ch. 2.
[14] *L'Ancien Régime,* vol. 3, p. 1.
[15] *Oeuvres,* vol. 5.

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Ce n'est pas de nos bouquins
  Que vient leur science:
Eux seuls, ces fiers paladins
  Ont la sapience.
Les Colbert et les Sully
Nous paraissent grands, mais fi!
  Ce n'est qu'une ignorance.

Du même pas marcheront
  Noblesse et roture;
Les Français retourneront
  Au droit de nature.
Adieu, Parlement et lois,
Les princes, les ducs, les rois,
  La bonne aventure.

From two weaknesses of the school, however, Turgot was not exempt. One was a lack of the historical sense. In his sweeping denunciation of the legitimacy of the guilds, his persistent regard of them as nothing but predatory parasites upon the body politic, he displays a decidedly a priori view of social process. Behind it lay an ardent faith in the perfectibility of human nature, an idealism that not even his losing struggle with Louis XVI could quite eclipse. But Seguier, in his weighty speech of opposition to the decree,[16] showed himself more realistically minded. Yes, says Seguier, there are certainly abuses that call for cure; but that is no reason for murdering the patient. Certainly more liberty is desirable; but it must be liberty under law, not anarchy. After all, human beings are far from perfect. They are greedy of gain, and honesty is unfortunately not always and everywhere the best policy. (Marat subsequently made almost an epigram of this: "If from the desire to make a fortune be taken away the desire to establish a reputation, farewell to good faith."[17]) We cannot assume—as Turgot had argued—that competition

[16] *Oeuvres*, ch. 5.
[17] Quoted in Say, *op. cit.*, ch. 8.

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for trade will prove a sufficient guarantee against fraud, or compel employers to discriminate in favor of the best workmen. And through the protest runs an undertone of fear of disorder and violence once the "turbulent youth" is loosed from the restraints then lying on it. It is true, of course, as the Webbs have pointed out,[18] that Seguier presents a typical defense of vested interests in occupations; but he also shows an appreciation of the rôle of corporate entities in social life that Turgot and his school fatally lacked.

A second weakness is the tendency toward rash generalization, conspicuously illustrated in the fundamental maxim of Turgot's policy. "The root of the evil," he says, "is in the very right accorded to artisans of the same trade to associate and act together in a body." Accordingly, the decree (Art. XIV) abolishes and prohibits, not merely the tyrannous associations of masters, but all associations of artisans, companions, or apprentices as well, acquiring thus that purely negative and destructive character that modern French commentators have deplored. And all in the name of individual freedom! The individual was ostensibly being given the chance to seek his own interest; yet if his interest lay—as it was increasingly to lie—in one paramount direction, he was expressly and rigorously enjoined from pursuing it. It may be—as Say maintains—that no general freedom of association had ever been recognized: the fact does not atone for the establishment of a legislative doctrine that was for half a century to lead farther and farther away from it.

It was precisely this negative character that subsequent legislation developed and emphasized: in nothing does the bourgeois nature of the revolution stand out more clearly.[19] Not only does the revolutionary legislation prohibit, in the most detailed and specific way, any group action on the basis of common employment; it elevates the disintegration of corporate life into a series of maxims that lie at the root of the

[18] *Industrial Democracy*, vol. 2, p. 566.

[19] Cf. Pic, *op. cit.*, Intro., ch. 3.

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whole movement and its manifold sequel. The phrases of the Declaration sound plausible enough until one remembers the use to which they were put two years later: "The source of all sovereignty is essentially in the nation; no body, no individual, can exercise authority that does not proceed from it in plain terms. . . . . Nothing can be forbidden that is not interdicted by the law, and no one can be constrained to do that which it does not order."[20]

The decree of 1791 makes of this sovereignty of law doctrine a denial of all group action in economic life—not only unfortunately, but perhaps mistakenly as well.[21] Citizens of the same trade or calling—whatever their status—may form no association, temporary or permanent, may make no joint decisions, may formulate no rules as to their "pretended common interests," may maintain no officers or records, may not even deliberate on common plans to affect the terms of employment. To do any of these things is made a criminal offense; to instigate them involves also the loss of citizenship.

It is comprehensible, of course, that the long oppression of the individual should have led to some over-statement of the case; but it needs more than that to justify the extent to which that case was pushed. It was suggested to Le Chapelier, for example, that voluntary associations of workmen might be permissible when their purpose was mutual help in time of sickness or unemployment. But he would have none of it. That, he says, is the duty of society, acting through its officials, and for it to be done privately, if not absolutely dangerous through bad administration, at any rate tends to resurrect the corporations.[22] St. Léon has repeatedly pointed out the sterility of the two extremes of individualism and state socialism. In fact, there were not even two extremes, but only one; for the French state was extraordinarily slow to acknowledge any positive responsibility in the matter. The nation was

[20] Anderson's trans. in *Constitutions and Documents.*

[21] See St. Léon, *op. cit.*, vol. 7, p. 1.

[22] St. Léon, *loc. cit.*

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thus saddled with a half-truth that was considerably less than half true.

The effect was doubly unfortunate, not merely because, as Pic maintains,[23] freedom of association is an indispensable corollary of freedom of occupation, but because a doctrine of individualism shorn of the right of association is in its very nature static and reactionary. The atomic theory of society, in its dogmatic form, amounts to a denial of the very forces that create society; it is, in fact, a theory, not of society, but of the raw material from which society develops under the action of those vital impulses it either ignores or condemns. Those forces were thus condemned to the same desperate underground existence they had led for centuries; and the practical sequel still remains to plague us. For as the industrial revolution followed on the political one, and the right of voluntary association came increasingly to the fore, it became inevitably mixed up with the doctrines of criminal conspiracy—a result that a more liberal philosophy might have averted altogether.

It is permissible, none the less, to hold that the atomic theory, like other famous half-truths, played its historic rôle as a step on the road to freedom. Self-determination for the individual was not in fact achieved by it, but was perhaps brought nearer than it might otherwise have been. Self-determination for the group is still an unsolved problem. Fascist theorists, loud in their denunciations of French individualism, maintain as stubborn a denial of this latter demand as the *ancien régime* did of the former—and may perhaps be courting a similar fate. But the reason for their attitude is common to all Western nations. The state, as the dominant group and the ostensible supreme organ of human solidarity, does not know how to maintain its security or its preëminence if complete self-determination for the group be conceded. It therefore jealously limits this right by statute and common law and by the interpretations of its judiciary, availing itself of

[23] *Traité*, vol. 3, p. 4.

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every quirk of the old doctrine to maintain the old negative attitude.

The problem is a difficult and momentous one, but it cannot be evaded. It is likely that just as a radical reconstruction of the state was necessary to clear the way for individual self-determination, so another reconstruction will be necessary to admit of group self-determination. But if history teaches anything, it is that the process of rushing from one extreme to the other offers no solution, and entails very costly consequences.

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Minority Control of Court Decisions in Ohio. The experience of Ohio with the requirement of concurrence of an extraordinary majority of the Supreme Court to declare a statute invalid is an illuminating commentary on the desirability of such a restriction. Much has been spoken and written on both sides of the question. Those who have seen laws embodying worth-while reforms invalidated by the courts, many times by bare majority decisions, have campaigned for a curtailment of the judicial prerogative. Publicists have expatiated on the evils of the situation. Textbook writers have embodied the arguments in their discussions. Teachers, it is to be feared, have quite glibly enlarged upon the necessity of unseating our "judicial obligarchy."

The late President Theodore Roosevelt, addressing the Ohio constitutional convention in 1912, urged that body to propose an amendment providing for the recall of judicial decisions. He failed to convince the convention of the desirability of his remedy, but he succeeded in creating a feeling that something must be done; and an amendment to the judiciary article was adopted, reading as follows: "No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring the law unconstitutional and void."[1] Since the Supreme Court is composed of a chief justice and six associate justices, the restriction amounts to a requirement of the concurrence of six justices in decisions of this kind. However, in case the court of appeals holds a statute to be unconstitutional, a bare majority of the Supreme Court may sustain the judgment of the lower court.[2]

Ohio thus became the first state to adopt a limitation of the type proposed many times to curb the action of the United States Supreme Court.[3] Only two other states have followed her example. North

[1] Art. IV., sect. 2.

[2] Professor Holcombe errs in stating that the Ohio plan "provided simply that statutes should not be declared unconstitutional by the lower courts, nor by the Supreme Court unless at least six of the seven judges concurred in the decision." *State Government in the United States* (rev. ed., 1926), p. 451.

[3] For a list of resolutions offered in Congress, see Charles Warren, *Congress, the Constitution, and the Supreme Court* (Boston, 1925), note to Ch. VI, pp. 220-221.

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Dakota amended her constitution in 1918 to require the concurrence of four of the five judges; and in 1920 the constitution of Nebraska was amended to require the assent of five out of seven. Both of these states amended their constitutions before any significant events had occurred by which the new system could be evaluated. Prior to 1920, only one case had been decided by the Ohio Supreme Court in which the outcome was determined by a minority of the judges.

Barker et al., County Commissioners, v. City of Akron[4] involved the constitutionality of a statute providing for the payment of election expenses.[5] Elections in Ohio are conducted by a bi-partisan board having county-wide jurisdiction under the supervision of the secretary of state. The statute in question provided that the expenses of all elections should be paid from the county treasury as county charges, with the exception of November elections in the odd-numbered years, e.g., the regular municipal contests. The county commissioners objected to paying the costs of all other municipal elections. Four members of the court believed that the section was unconstitutional. Three members were of the opinion that the statute was not repugnant to any constitutional provision. Since the court of appeals held the statute to be valid, the division of the Supreme Court made it necessary to affirm that decision, which was done in a brief *per curiam* opinion and without argument of the merits of the question.

Logically and reasonably, it would appear that the county commissioners could sustain their objection to paying the costs of elections which are ordered by authorities over whose action they have no control, as in the case of special votes for bond issues, charter amendments, and the like, in the cities within the county boundaries. Further, it seems only reasonable that the city should bear its proper share of the costs of primary elections for the nomination of local officers. The intention of the statute to provide for payment of the costs upon the certificate of the board of deputy state supervisors of elections was to that extent justifiable. The effect was, perhaps, the result of an oversight on the part of the legislature. A comparatively simple amendment to the statute would have been sufficient to remedy the difficulty in a satisfactory manner. The minority of the court was doubtless entirely correct in holding that the statute was not contrary to any specific constitutional provision, though the

[4] 98 Ohio St. 446, 121 N. E. 646. Decided April 2, 1918.

[5] Sect. 5052, General Code.

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section in question was undoubtedly repugnant to our conception of right and justice and to the spirit, if not the letter, of the constitution. The important point, however, is that a minority of the court was able to override the majority and to determine its decision. It being a minority of three, and in a case which did not have immediate and serious ill effects, the outcome was considered inconsequential.

Since that time, at least six clear cases of minority control of the decision of the court have occurred, one each in 1923 and 1925, and four in 1927. Other cases might be mentioned, but the reports do not give positive evidence of the effect of the rule.[6] Three of the six cases referred to were decided by three judges, while in the other three cases two members of the court controlled its action. Two cases were concerned with the validity of city ordinances, and one considered the constitutionality of a statute which limited cities in the control of their utilities. In two cases, sections of the workmen's compensation act were called in question; and the remaining case related to the compensation of judges.

In Fullwood v. City of Canton,[7] the validity of a police regulation of the city was upheld by the court of appeals. Five of the judges of the Supreme Court believed that the ordinance did not operate equally upon all the members of a class, and that it improperly limited the freedom of contract and thus was contrary to the constitution. Two, however, held that the ordinance was within the limitations of the constitution. The court then sought to inquire whether a municipal ordinance was a law within the meaning of the requirement. Four judges held that it was not a law. However, the two judges who held the ordinance constitutional were among the majority of the court who believed that the ordinance was not a law. Since these judges could not consistently concur in a reversal, the result was the

[6] Morton v. State of Ohio, 105 Ohio St. 366, 138 N. E. 45 (1922); Royal Green Coach Co. v. Public Utilities Commission, 110 Ohio St. 41, 143 N. E. 547 (1924). In the Morton case, the statute was declared unconstitutional, though there is evidence that some of the judges were not fully convinced but concurred. The writer of the opinion in the Coach case believed the statute unconstitutional, but does not state how many of the justices agreed with him on that point. The case being heard by only six judges, the question might also be raised as to whether a unanimous concurrence would have been necessary to declare the statute void. The judge implies in the opinion that it would have been necessary.

[7] 116 Ohio St. 732, 158 N. E. 171. Decided March 29, 1927.

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affirmation of the decision of the court of appeals, by the action of two of the seven judges of the Supreme Court.

A similar, but not so extreme, situation is found in Meyers v. Copelan, Chief of Police, et al., decided in the same year.[8] A Cincinnati city ordinance prohibited and penalized jewelry auctions. The decision was controlled by three judges of the court. The opinion states the problem admirably:

"Manifestly this ordinance is enacted under the power to make local police regulations[9] and the courts cannot interfere with such legislative authority of the city unless the court can say that the ordinance had no real or substantial relation to the objects sought to be obtained, but is a clear, unmistakable infringement of the rights secured by the fundamental law. In the opinion of three members of this court, this ordinance does not so offend. Four members of the court . . . . hold that the ordinance does violate constitutional limitations and interferes with the freedom of contract. Three members of the court . . . . are of the opinion that the provisions of Section 2 of Article IV, requiring the concurrence of at least all but one of the judges to declare a law to be unconstitutional and void except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void, applies to the ordinances of municipalities. There being more than one member of this court holding the ordinance to be constitutional, and there not being as many as four members of this court who hold that an ordinance is not a law, who at the same time concur in a judgment of reversal, it follows that there is an insufficient number of judges concurring upon the points of law necessary to a reversal, and the judgment of the Court of Appeals must be affirmed."

State, ex rel. Jones v. Zangerle, Auditor,[10] raised the question of the validity of an amendment, passed in 1927, to Section 2253 of the General Code of Ohio. The amendment increased from ten to twenty dollars a day the compensation of judges assigned temporarily to duty outside the jurisdiction of their own courts. Judge Jones, of the common pleas court of Miami county, presented his voucher to Auditor Zangerle of Cuyahoga county for compensation for services at twenty dollars per day, while assigned to the bench of the latter county. The auditor refused to issue his warrant on the treasurer

[8] 117 Ohio St. 622, 160 N. E. 855. Decided October 26, 1927.
[9] Constitution, Art. XVIII, Sect. 3.
[10] 117 Ohio St. 507, 159 N. E. 564. Decided December 21, 1927.

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for the full amount, but offered to draw a warrant for ten dollars a day, Judge Jones having been in office at the time of the passage of the statute. The judge brought an original application for a writ of mandamus to the Supreme Court. Three members of the court concurred in an opinion holding the increase valid and constitutional as part of the compensation which was "occasional, contingent and variable as paid for services rendered by a judge outside his county," and not within the purview of the constitutional limitations which covered only a salary paid to a judge for services within the jurisdiction of his own court. Four judges were of the opinion that the law could not apply to the judge in the instant case, in view of the constitutional limitations. Yet the three judges controlled the decision and the writ was allowed. The court stated its position as follows: "While members of this court deplore such a constitutional provision—one which permits judicial control over grave constitutional questions by a minority vote—the fault lies, not in the court, but in the constitutional provision which produces such a result."

In DeWitt v. the State, ex rel. Crabbe, Attorney-General,[11] the court was called upon to consider the validity of a section of the Workmen's Compensation Act.[12] This section provided, among other things, that an additional sum amounting to fifty per cent of the compensation should be added in favor of the injured person by way of a penalty in event the award of the Industrial Commission was not paid within ten days of the Commission's action. This provision related, of course, only to those employers who had not provided for compensating their injured employees by insuring either in the state insurance fund or in an outside company. It was designed to secure compliance with the act. The size of the penalty, however, induced five judges to assert the unconstitutionality of the section, including the judge who wrote the opinion of the court. These judges urged unconstitutionality upon the ground that the clause "tends to compel obedience to the administrative orders of the Commission and operates as a deterrent upon an employer who may desire, in good faith, to test the validity of such orders, and, to that extent, transcends legislative power and violates the state and federal constitutions." Two judges, while agreeing with the court in the decision of the other questions in the case, held that the clause under consideration was constitutional and within the power

[11] 108 Ohio St. 513, 141 N. E. 551. Decided November 13, 1923.

[12] Section 1465-74, General Code.

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of the legislature. Accordingly, the third paragraph was added to the syllabus of the case, specifically declaring the clause valid, although five judges opposed such a finding.

Another section of the Workmen's Compensation Act was questioned in State, ex rel. Williams v. Industrial Commission of Ohio.[13] The legislature amended the act in 1925 to extend the right of compensation from the state funds to persons who at any time after January 1, 1923, were injured while in the service of an employer who later became insolvent, even when the employer had not subscribed to the state insurance fund.[14] Williams brought an action in mandamus to compel the Industrial Commission to pay compensation from the surplus fund under this section for injuries which he had received in 1923. The opinion of three judges held that the law was constitutional and that Williams was entitled to the writ. Four judges concurred in the dissenting opinion, which urged the unconstitutionality of the amended section, maintaining that "participation in the benefits of the fund by employees of employers who have not contributed to it, and from whom contributions cannot be collected, is a taking of property without due process of law as prohibited in both the federal and state constitutions." At the same time, the dissenting judges thus expressed their position as to the principle of workmen's compensation: "It should be stated at the outset that no one at this time, after fourteen years' experience with workmen's compensation, questions the beneficence of its provisions, and no one denies the authority of the state in the exercise of the police power to impose assessments and by civil process collect from solvent employers such rateable sums as will provide a reasonable insurance fund to compensate industrial accidents."

The decisions which thus far have been discussed are completed by a sequence of two municipal cases. They arise from a statute which attempts to prohibit municipalities owning or operating water works from charging for service for certain enumerated municipal purposes, public buildings, the board of education, or charitable institutions.[15] The city of East Cleveland attempted to charge the school board of

[13] 116 Ohio St. 45, 156 N. E. 101. Decided March 8, 1927.

[14] Section 1465-75, General Code, as amended, 111 Ohio Laws 218.

[15] Section 3963, General Code. The clause relating to charitable institutions was held unconstitutional in Euclid v. Camp Wise Association, 102 Ohio St. 207, 131 N. E. 349. March 29, 1921.

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the city school district for water furnished by the municipal water plant. Upon the refusal of the board to pay, the city brought suit to recover, claiming that the statute, in this respect at least, was repugnant to Sections 4, 5, and 6 of Article XXVIII of the constitution, which seemingly confer very complete powers upon the city to operate its public utilities.[16] At first glance, there appears to be no reason for such a charge in the case of the school district. It reminds one of taking money from one pocket to put it in another. But on a closer view it is readily apparent that, although the groups are largely composed of the same persons, those who pay water rates are not necessarily the same individuals who pay taxes, nor are the charges proportionately the same. There is thus no adequate reason for compelling the users of water to provide a sufficient supply to be devoted to the other uses. The majority of the court, five judges in this case, wished to declare that portion of the statute void which related to a water supply for the school district, following the decision of the Euclid case.[17] The remaining two members of the court decided the outcome, affirming the decision of the court of appeals which had upheld the statute. The opinion of the effective minority rested upon the contention that for the city to charge for water for a school building would render the school district subject to the city. The pleadings had not affirmatively shown that the efficiency of the school district would be affected. The entire decision rested upon the constitutional mandate to the legislature to provide for and encourage schools.[18]

The East Cleveland case occurred in the Eighth Appellate District. In 1928 a case was carried to the Supreme Court from the Second Appellate District. Board of Education v. Columbus[19] presented a statement of facts which was identical in all essential respects with that of the East Cleveland case. And the brief itself admitted that it was "a frank endeavor to make effective the opinion of a majority of the Supreme Court." This time the lower courts held the statute unconstitutional. The same division of the Supreme Court occurred, the personnel being unchanged, with the result that the East Cleveland case was overruled and the ruling of the Euclid case was ap-

[16] City of East Cleveland v. Board of Education, 112 Ohio St. 607, 148 N. E. 350. May 26, 1925.

[17] See note 15 above.

[18] Constitution, Art. II, Sect. 26.

[19] 118 Ohio St. 295, 160 N. E. 902. Decided April 4, 1928.

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proved and followed. To settle the matter, the statute was declared void "for the further reason that it results in a taking of private property for public use without compensation therefor, in violation of Section 19, Article I, of the Ohio Constitution."[20]

Admittedly, the outcome of this case was very satisfactory to the city of Columbus. But it offers no relief to East Cleveland or to any other city in the Eighth Appellate District. Unless a change occurs in the personnel or opinions of the court of appeals, that court in a second case would be perfectly justified in following its former decision. In like manner, the Supreme Court would be forced to affirm the judgment. By this restriction, the influence of the Supreme Court in harmonizing the judgments of the lower courts is destroyed, in so far as it concerns the constitutionality of statutes. In effect, the final determination of this all-important question of the validity of legislative acts is turned over to the intermediate judicial bodies except where their decision is so manifestly erroneous that there can be practically no difference of opinion. Litigants, in place of finding a uniform law throughout the state, may find a law applicable in one jurisdiction while it is void in another. Certainly this is not an end to be desired.

It may be urged that this is an isolated case. But it clearly indicates the possibility of an increasing chaos in the law. A further case affords an almost parallel example of the same result. In Antenen v. State, for the Benefit of Bredwell, et al.,[21] the court of appeals of Butler county held the fifty per cent penalty clause of the Workmen's Compensation Act to be invalid, making no reference in the opinion to the DeWitt case. On appeal, the Supreme Court upheld the judgment of the lower court and overturned its former ruling.[22] The situation is saved from entire similarity to that of the water cases by the concurrence of six judges. It does, however, show that an inferior court may not consider itself bound by a minority decision, and, in such a case, is free to render its decision *de novo*.

We cannot appeal to the rule of *stare decisis* for a solution of the difficulty. It is to be hoped that lower courts would follow the judgment of the Supreme Court. Indeed, that would be the normal ex-

[20] Syllabus, paragraph 2.

[21] 27 Ohio Appellate 4, 160 N. E., 637. Decided June 10, 1927.

[22] State, for the Benefit of Bredwell, et al. v. Hershner, et al., 118 Ohio St. 555, 161 N. E. 334. Decided April 18, 1928.

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pectation. But the opinion in the Columbus case quotes from the opinion of the lower court as follows: "In the very nature of superior and inferior courts, the latter should follow the adjudicated cases by the higher court when the judgment of the higher court rests upon the concurrence of a majority of the judges, but we are of the opinion that, where the judgment of the Supreme Court rests upon the concurrence of less than a majority, such judgment is binding only in that particular case as an adjudication, but is not binding in other cases under the rule of *stare decisis.*" And the Supreme Court found ample authority for approving the refusal of the court of appeals to follow the rule in the Columbus case, the former decision having been made by a divided court.[23] Further, any court of appeals in the state is at liberty to proceed to its decision as if no previous case had been determined, knowing that the higher court could not order a reversal. No generally accepted body of principles is created. No new norms of judicial action are established. The very basis of our system of law is threatened.

Can it be said that all this applies merely to Ohio? Similar results have been forecast if Senator Borah's proposal were adopted as a limitation upon the federal Supreme Court.[24] It makes little difference whether the exception is made in favor of the affirmance of a decision of the lower court. In the absence of a sufficient majority to overturn that decision, the Supreme Court could not do otherwise than affirm the judgment. That is already true of decisions in which the court divides evenly, one or more judges being absent. Inconsistent and inequitable application of the law is bound to follow.

More serious than the immediate effects of decisions such as have been presented are the implications which relate to the basic foundations of the American political system. Majority action is tacitly or expressly provided for in almost all of our governmental agencies. Indeed, we sometimes carry its operation to absurd extremes. But it remains as fundamental to the successful operation of courts of collegiate design as to legislative or administrative bodies. We have preferred, along with most other countries, to vest the ultimate decision of justiciable questions in a group rather than to allow one

[23] Hertz v. Woodman, 218 U.S. 205, 30 Supr. Ct. 621, 54 L. Ed. 1001, which cited several other cases as precedents.

[24] Charles Warren, *Congress, the Constitution, and the Supreme Court* (1925), Ch. IX.

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man to control such important matters. Yet the requirement of an extraordinary majority is productive of minority control in questions of the constitutionality of statutes. It cannot even be said that the existence of a determined minority indicates a reasonable doubt in the minds of the group as such. Differences of opinion are bound to occur, even among reasonable men. But order and consistency require that the opinion of the majority shall prevail.[25]

Finally, what is the effect of such decisions upon the constitution? We have consistently subscribed to the practice of writing fairly rigid amendment provisions into our constitutions. Seldom is a legislative body permitted by its own action alone to amend the fundamental law. In fact, the modern tendency has been to remove many questions of policy from legislative jurisdiction by placing them in the constitution. The courts have been the established guardians of that body of law for the purpose of insuring that no method of change, other than the orderly process provided, shall be used to subvert its provisions. Foreign, as well as American, writers point to this development as a part of the very genius of the American constitutional system.[26] Whatever may be the merits of a flexible constitution, the fact remains that the United States does not, as a nation, accept that principle. Particularly do we refuse to place confidence in our legislatures to protect our interests. Yet, not only in fact but in theory, the requirement of an extraordinary majority of the Supreme Court does mean legislative finality. We are accomplishing by indirection a result to which we object when straightforwardly advocated. The majority of the court is forced to permit decisions to be handed down which are contrary to its convictions, or members of the minority are forced to concur with the majority in order to make the real opinion of the court effective. Small wonder that the Ohio Supreme Court chafes under the restriction and demonstrates its impatience in no uncertain terms, even going so far, seemingly, as to overstate the case at times. In the main, however, the point of view of the court is worth considering. How long can the dignity and honor with which

[25] The question of reasonable doubt has been covered thoroughly by R. E. Cushman in "Constitutional Decisions by a Bare Majority of the Court," 19 *Michigan Law Review* 771-803 (1921). See also Charles Warren, *op. cit.;* Charles E. Hughes, *The Supreme Court of the U. S.* (1928), pp. 237-241.

[26] See A. V. Dicey, *Law of the Constitution* (8th ed.), pp. 154ff, and other authors cited.

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we have endowed our highest tribunals be maintained in the face of such adverse circumstances? The remedy for our "judicial oligarchy" is worse than the evil which it was designed to alleviate.[27]

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Impeachment of Oklahoma Governors. In Oklahoma, impeachment is of the soil racy. In the twenty-three years of statehood, thirteen impeachment messages have been received in the Senate from the House. Governor Williams (1914-18) has been the only one of six elected governors against whom House investigations were not ordered, and he may have been spared by the unusual House rule which declared any members guilty of perjury who swore to charges that were not substantiated in an investigation.

Backed by the farmer-labor group, John C. Walton was elected governor in 1922 in a campaign marked by bitterness and party bolting.[1] Before he was inaugurated, rumor had it that he would be impeached. Opposition to him sprang from three main sources—disappointed office-seekers, the klan, and the school *bloc*. However, it was the klan that finally dragged him down. To prevent klan outrages and to punish their perpetrators, Walton attempted to employ the military forces of the state. Martial law was declared in the city of Tulsa on August 13, 1923. It was soon extended to the whole of Tulsa county, to Okmulgee county, and finally on September 1 to the whole state. Adding to the confusion, the legislature tried to convene itself in extraordinary session, under the excuse that the governor's action had made such a step necessary and essential to the welfare of the state. Walton countered by branding the legislators as klansmen and a meeting of the legislature as an unlawful klan assembly. An attempted convening was frustrated by armed force on September 16.

[27] Since this article was written, two additional cases have been reported in which a minority of the court determined the decision. State, ex rel. Bryant v. Akron Metropolitan Park District for Summit County, et al. (166 N.E. 407, March 27, 1929) upheld the constitutionality of the Park District Act (Sections 2976-1 to 2976-10i, General Code). Two judges concurred in the opinion. On the same day, the same judges upheld the Sanitary District Act (Sections 6602-34 to 6602-106, General Code), in Shook, et al. v. Mahoning Valley Sanitary District, et al. (166 N.E. 415). One judge did not participate in the latter case.

[1] For a brief account, see Ernest T. Bynum, *Personal Recollections of Ex-Governor Walton.*

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In August, Walton had set October 2 as the date for a special referendum election, and he enumerated in the proclamation the measures to be submitted. Soon thereafter, Campbell Russell, known to Oklahomans as the champion sponsor and user of the popular initiative, circulated a petition to amend the constitution so as to permit the legislature to convene itself upon a petition signed by a majority of its members. The Russell petition, known as Initiated Petition No. 79, was placed on the ballot over the protest of the governor. To forestall the legislature, Walton issued another proclamation countermanding the August proclamation and setting December 6 as the date for the special election; and he directed telegrams to all the local election officials informing them of the change. Some of the local officials ignored the order, while others obeyed it. Struggles for the possession of ballots and other election equipment were common, and in some precincts the voters spent considerable time trying to locate the official polling places. With this sort of balloting, the petition carried by a vote of 188,572 to 57,899.

Walton's defense was shattered. On October 5, the legislative leaders announced that the legislature would convene twelve days later under the authority of Petition No. 79. On October 6, the governor, hoping to limit the legislature to legislative matters, issued a call for a special session to meet on the 11th for the purpose of investigating the klan. The legislators ignored the governor's offer to resign following the passage of an anti-klan statute, laughed at his message, and successfully opposed his attempts to build up an organization in the House. On the 23rd the Senate received a message from the House stating that articles of impeachment had been prepared against Walton and that the same had been adopted.[2] The Senate immediately suspended the governor.

The Senate then organized itself into a court of impeachment, with the chief justice of the supreme court in the chair, and adopted rules under which the trial was conducted. With preliminaries over, the trial actually began on November 1. It lasted but twenty calendar days. Twenty-two articles of impeachment charged the governor with unlawful appointment of officers, padding the payrolls, using the pardon power to defraud, accepting monies from persons who had business transactions with boards of which he was a member, illegal

[2] *Transcript of Proceedings of the Senate of the Ninth Legislature (Extraordinary Session), State of Oklahoma,* xiii.

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and unwarranted use of the military, unconstitutional suspension of the writ of habeas corpus, suppression of a legally instituted grand jury, and general incompetency.[3]

Only one side of the case was presented for trial, since the defense did not place a single witness on the stand. On November 17, following an adverse ruling of the court on the admissibility of evidence, Walton rose and said: "Mr. Chief Justice, and members of this Court: I have been sitting here fighting for my honor, for my rights, and for my home for ten days. I don't wish here to criticize any of these honorable members; some of them no doubt want me to have a fair trial; but I have reached the conclusion that I cannot have a fair trial in this Court. Knowing that, I am withdrawing from this room. I don't care to stand this humiliation any longer for myself, my family, or my honorable attorneys. You may proceed as you see best."[4]

After this dramatic episode the trial was quickly drawn to a close. There were no doubts as to what the decision would be. Article XIX, charging abuse of the pardon power, was presented and sustained by a unanimous vote of the 41 members present.[5] The managers thereupon submitted fifteen other articles, ten of which received the necessary two-thirds. On motion of the prosecution, the other counts were dropped, though the request precipitated a debate as to the authority of the managers to ask for the dismissal and the court to grant it.[6]

Lieutenant-Governor Trapp succeeded to the governorship. Prior to the 1926 primary, the court held him ineligible to succeed himself, even though he had not been elected governor.[7] This decision materially aided Henry S. Johnston, the avowed klan candidate, who defeated two other candidates by narrow margins. The anti-klan, disappointed office-seekers, and the personal enemies of Mrs. Hammonds, who was Johnston's private secretary, coalesced into a strong opposition which showed its strength before the close of the first legislative session and which demanded a show-down eight months later in what is now known facetiously as the "Ewe Lamb Rebellion." An attempted convening of the legislature at the capitol was frustrated by armed guards; hence rump sessions were held in the Huckins Hotel. A test case was

[3] For text of articles of impeachment, see *ibid.*, 19-55.
[4] *Ibid.*, 1523.
[5] Senator Barker was absent throughout the balloting.
[6] *1923 Proc.*, 1936-9.
[7] *Fitzpatrick v. McAlister*, 121 Okla. 83.

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brought by the administration to decide the constitutionality of Petition No. 79. The court held it unconstitutional, inasmuch as it had not been included in Walton's first proclamation; and, since the election scheduled for December had not been held, the court declared that the petition had never been legally submitted to the electorate.[8] The court affirmed that the legislature possessed inherent investigative power, but that, until duly organized, it had no more power to investigate state officers than had any ordinary assembly of citizens.

The thirteen months of forced inactivity merely intensified the determination of the opposition to remove the governor, and when the legislature met in regular session in January, 1929, no time was lost in voting the articles of impeachment.[9] Six of the eleven counts charged unlawful issuance of deficiency certificates, two claimed illegal appointment, and the other three charged unlawful use of the military to prevent an assembly of the legislature, corrupt use of the pardon power, and general incompetency.[10] The trial lasted from February 11 to March 20, and the record of the proceedings contains more than five thousand pages. Focussing their attention upon the incompetency charge, the managers sought to justify it by showing that the governor was dominated by Mrs. Hammonds. There was no attempt to prove him viciously corrupt or morally derelict. Submitted first, the incompetency article was sustained by a vote of thirty-five to nine.[11] Thereafter, the other ten counts were put, but each failed to obtain the necessary majority. The outcome was indeed curious. Johnston was adjudged incompetent, yet no specific act was deemed sufficiently flagrant to merit conviction.

In both these impeachments, the articles were voted in the House by decisive majorities; in fact, twenty of the twenty-two counts voted against Walton secured a three-fourths majority.[12] Upon the receipt of the House message, the Senate in each case suspended the governor. However, when the 1929 message was presented, a senator moved that it be neither received nor filed.[13] An interesting situation might have

[8] *Simpson v. Hill*, 128 Okla. 90, 236 Pac. 384.

[9] *Transcript of Proceedings of the Senate of the Twelfth Legislature, State of Oklahoma (sitting as a Court of Impeachment)*, I, xiv, xv.

[10] *Ibid.*, I, xvii-xxxii.

[11] *Ibid.*, II, 5399.

[12] *1923 Proceedings*, 56.

[13] *1929 Proceedings*, I, xxiv.

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developed if the motion had carried; but in point of fact it failed. Thirty-one rules of procedure were adopted by the first court.[14] With one omission, the same rules were in force during the second trial. The omitted rule prescribed that members, desirous of questioning witnesses, should reduce their questions to writing and forward them to the presiding officer, who would put them. The court showed no disposition to enforce the rule. On the court there were practicing attorneys who enjoyed questioning witnesses. Further, by putting very leading questions, the members violated the spirit of the rule prohibiting their giving testimony. A few motions from the floor sought to strike such questions, but none carried in the face of the excuse that the member was only seeking to bring out all of the facts. The rules provided that, for the admissibility of evidence, the rules of the criminal courts of the state should obtain.

The Walton attorneys worked under the presumption that an appeal might be taken from the decision of the court. In fact, they entered 170 exceptions to overruled objections, and at the conclusion of the balloting, they asked that a bill of exceptions be prepared. They also made a motion for a new trial, which was denied.[15] The court thereupon adopted a motion denying appeal from its decision. The Johnston attorneys, more conversant with legislative procedure, entered no exceptions, and they accepted the decision without protest.

Many explanations are offered for the popularity of the impeachment process in Oklahoma. To the writer, it seems to flow from five main sources: (1) it is now thoroughly precedented; (2) the population of the state is pronouncedly heterogeneous as to historical antecedents; (3) the Democratic party contains several unreconciled factions; (4) legislative *blocs* make political bartering profitable to members and dangerous to the governor's tenure; and (5) the legislature recognizes in itself the omniscient guardian of the state's welfare, and this hegemony remains unchallenged.

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Impeachment in Texas. The Ferguson case in 1917 represents the only instance of the impeachment and conviction of a state official in

[14] *1923 Proceedings*, 6-16.
[15] *Ibid.*, 1938.

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Texas.[1] The law of impeachment must then be sought in the proceedings of the Ferguson trial, the opinions of the attorney-general, and the opinion of the supreme court in 1924 in the case of Ferguson v. Maddox, which reviewed the legality of the 1917 proceedings in determining whether Mr. Ferguson was eligible to have his name placed on the primary election ballot as a candidate for governor.[2]

Impeachment at a Special Session. The constitution provides that the governor may on extraordinary occasions convene the legislature in special sessions limited to thirty days' duration, during which there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling the session or presented by him.[3] The facts in the Ferguson case may be reviewed briefly. The speaker of the House of Representatives, on his own motion, had issued a call for the House to meet in special session on August 1, 1917, to consider the impeachment of the governor. Before the members could assemble, the governor issued a call for a special session of the legislature to meet at the same time as that set by the speaker's call for the purpose of considering the matter of university appropriations. The House proceeded with the investigation and impeached the governor, who was thereupon suspended from office.

The legality of the House's action was upheld in an opinion of the attorney-general on August 21. The law officer concluded that the impeachment power was judicial in nature, that the House, in impeachments, acted, not as a part of the legislature, but as a separate entity, in no way dependent upon the exercise of a legislative or executive power. The limitations and requirements of the constitution as to how and when the legislative power shall be exercised have no application to the use of the impeachment power. Moreover, to hold that the exercise of this power is dependent upon the governor would allow that official to prevent his own impeachment except at a regular session of the legislature.[4]

In the Maddox case, the defendant urged the illegality of impeachment at a special session, and added that the charges were adopted by the House at one special session and trial by the Senate was begun,

[1] Cf. "Impeachment of Governor Ferguson," 12 *American Political Science Review* 111-115 (1918).

[2] Ferguson v. Maddox, 263 S. W. 888 (1924).

[3] *Constitution*, Art. III, sec. 40; Art. IV, sec. 8.

[4] *Biennial Report of the Attorney-General*, 427-439 (1916-1918).

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but concluded at a subsequent session called by the acting governor.

The supreme court held that the House had authority to impeach the governor and the Senate to enter upon the trial of the charges at the called session of the legislature, although the matter of impeachment was not mentioned in the proclamation convening it. The constitutional powers of the House and Senate in impeachment "are essentially judicial in their nature. Their proper exercise does not, in the remotest degree, involve any legislative function." The section which provides that legislation at a special session shall be confined to the subjects mentioned in the proclamation of the governor convening it imposes no limitation, save as to legislation.

Impeachment proceedings, begun at one session of the legislature, may lawfully be concluded at a subsequent one, the court declared. "Each house is empowered by the constitution to exercise certain functions with reference to the subject-matter; and as they have not been limited as to time or restricted to one or more legislative sessions, they must necessarily proceed in the exercise of their powers without regard thereto."[5]

May the House and Senate meet for impeachment purposes at any time, regardless of the governor, and independently of regular or special legislative sessions? There are no recorded instances of the impeachment and trial of a governor by a self-convened special session, and the authorities are divided.[6] While the question was not involved in the Ferguson impeachment, the opinion of the attorney-general, noted above, and certain dicta in the Maddox case indicate that had the House and Senate convened without the call of the governor, the validity of the proceedings would have been sustained. The attorney-general was emphatic in his statement that the constitution imposes no limitation upon the power of impeachment. It is vested without limitation as to time of use. The constitution being silent as to when it shall execute the command laid upon it, the House may act at any time.

Similar expressions were used by the court in the Maddox case. "The powers of the House and Senate in relation to impeachment exist at all times. . . . . Without doubt, they may exercise them during a special session, unless the constitution itself forbids." "The broad

[5] Ferguson v. Maddox, 263 S. W. 890-891 (1924).

[6] M. T. Van Hecke, "Impeachment of Governor at Special Session," *Wisconsin Law Review*, 155-169 (1925).

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power conferred by Article 15 stands without limit or qualification as to the time of its exercise.''

To provide a method for the houses to convene for impeachment purposes, when they are not in session, the third called session of the Thirty-fifth Legislature enacted a law supplementing existing provisions on impeachment.[7] If the House of Representatives is not in session when the cause for impeachment arises, or when it is desired to institute an investigation pertaining to a contemplated impeachment, the House may be convened in any of three ways: (a) by proclamation of the governor, (b) by proclamation of the speaker of the House, which shall be made only when petitioned for in writing by not less than fifty members of the House; or (c) by proclamation in writing signed by a majority of the members of the House.

The Senate may be convened for the purpose of considering such articles of impeachment by the following methods: (a) by proclamation of the governor, or upon his failure to act within ten days after the articles of impeachment are preferred by the House, then (b) by proclamation of the lieutenant-governor, who has fifteen days from adoption of the articles to act, (c) by proclamation of the president *pro tempore* of the Senate, who has twenty days to act; and (d) by proclamation in writing signed by a majority of the members of the Senate.

In the autumn of 1925 an attempt was made to convene the House of Representatives to investigate certain alleged irregularities under the administration of Governor Miriam A. Ferguson. The speaker was petitioned by a number of members to call the House in session, and on November 17 he sought advice from the attorney-general. The law officer, referring to the opinion of his department in 1917 and to the Maddox case, replied that the House and Senate could constitutionally convene, in the manner provided by the statute, for impeachment purposes or to make an investigation pertaining to a contemplated impeachment. But the House and Senate sitting in their judicial capacities in connection with impeachments do not constitute the legislature. As the two bodies would not be assembled for legislative purposes in regular session, or special session called by the governor, no appropriation could be made by the houses to pay the expenses of the session.[8]

[7] *Laws*, 35th Leg., 3d called sess., 102-106 (1917)

[8] *Biennial Report of the Attorney-General*, 283-287 (1924-1926).

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Three weeks later the attorney-general advised the speaker that the financing, or underwriting, of the expenses of a session of the House for impeachment purposes from private or individual sources (which had been offered) would be unauthorized and unwarranted as against public policy.[9]

In a subsequent opinion to a member of the House, it was held: (1) that members of the House attending a session convened upon proclamation of the speaker would have valid claims against the state for mileage and per diem, notwithstanding the fact that no previous appropriation had been made for such purpose by the legislature; (2) that there would be no legal authority for the House to convene except for actual impeachment purposes or for investigation pertaining to an actual contemplated impeachment; (3) that claims of members of the House for earned mileage and per diem would be assignable, but not in advance of earning; and (4) that it would not be unlawful for citizens to purchase such claims or to announce their willingness to do so. But no agreement could legally be made in advance that they would do so.[10]

Faced with these practical difficulties of insuring payment of members of the House, the speaker abandoned the attempt to assemble the members. Thus the question of the constitutionality of a self-convened session of the House for impeachment purposes remains to be judicially determined.

May an Impeached Officer Resign before Final Judgment? Ex-Governor Ferguson contended in the Maddox case that the judgment of the court of impeachment was void, because he was not subject to its jurisdiction, having the day before the court's judgment was pronounced filed his written resignation, to take effect immediately, in the office of the secretary of state. The court denied that the governor could thus escape the impending judgment. The court of impeachment had heard the evidence and declared him guilty. Its power to conclude the proceedings and to enter judgment was not dependent upon the will or act of the governor. "Otherwise, a solemn trial before a high tribunal would be turned into a farce."[11]

Nature of Impeachable Offenses. The constitution is silent as to what constitutes impeachable offenses; neither does it prescribe the

[9] *Ibid.*, 211-213.
[10] *Ibid.*, 329-333.
[11] P. 893.

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mode of impeachment, other than to provide that the power of impeachment shall be vested in the House of Representatives and trial shall be before the Senate, sitting as a court of impeachment, with the senators on oath impartially to try the person impeached. While admitting that impeachable offenses are not defined in the constitution, the Court in the Maddox case held that they are very clearly designated or pointed out by the term "impeachment," which at once connotes the offenses to be considered and the procedure for the trial thereof. "The grant of the general power of 'impeachment' properly and sufficiently indicates the causes for its exercise. . . . . There is no warrant for the contention that there is no such thing as impeachment in Texas because of the absence of a statutory definition of impeachable offenses."[12]

Penalty on Conviction for Impeachment. According to the constitution, "judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this state. A party convicted on impeachment shall also be subject to indictment, trial, and punishment, according to law."[13]

The validity of the disqualification part of the judgment of the court of impeachment was attacked in the Maddox case, because the statutes did not provide that impeachment should constitute disqualification to hold office. This was immaterial, said the court, for the constitution, in the matter of impeachment of the officers designated, is clearly self-executing and needs no aid from the legislature. "Obviously the legislature may not deprive the Senate of the power to enter such judgment as the constitution authorizes."[14]

When the Supreme Court decided in June, 1924, that Mr. Ferguson was constitutionally ineligible to hold office, the name of his wife was placed on the primary election ballot as a candidate for governor, and in the ensuing campaign she was nominated. Suit was brought to prevent the printing of Mrs. Ferguson's name on the official ballot at the general election in November, on the ground that she was ineligible because, among other reasons, she was the wife of James E. Ferguson, who stood impeached and disqualified to hold any office. Appellant contended that the emoluments of the office of governor were

[12] P. 892.

[13] *Constitution*, Art. XV, sec. 4.

[14] Pp. 892-893.

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community property and that Mr. Ferguson could not receive his community half of his wife's salary without violating the decree of impeachment. The supreme court could not see that Mr. Ferguson would be receiving any emolument or profit derived from any office held by himself. The disqualification insisted upon could be supported on no other theory than that of legal identity of husband and wife, which theory the court repudiated. The constitution limits the Senate's judgment of impeachment to removal and disqualification and will not permit the imposition of penalties on members of the family of an impeached governor.[15]

Status of the House and Senate in Impeachment Proceedings. In the Maddox case the court declared that in impeachments the House acts somewhat in the capacity of a grand jury, while the Senate acts as a court. "The Senate sitting in an impeachment trial is just as truly a court as is this court. Its jurisdiction is very limited, but such as it has is of the highest. It is original, exclusive, and final. Within the scope of its constitutional authority, no one may gainsay its judgment."[16]

May the Legislature Pardon for Impeachment? The Thirty-ninth Legislature in 1925 enacted a law granting to any person convicted on impeachment "a full and unconditional release of any and all acts and offenses of which he was so convicted," and providing that all penalties or punishment imposed by the impeachment court should be "fully cancelled, remitted, released, and discharged." It was clearly the intent of the law to restore political rights to ex-Governor James E. Ferguson.[17] In response to a request from the House of Representatives, the attorney-general, on February 12, 1925, presented an opinion to the speaker holding this amnesty measure unconstitutional.[18] Legal opinion in general supported the attorney-general's contentions,[19] and the Fortieth Legislature, in 1927, repealed the act.[20]

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[15] Dickson v. Strickland, 265 S. W. 1012 (1924).

[16] Pp. 890-891.

[17] *Laws*, 39th Leg., reg. sess., 454-455 (1925).

[18] *Biennial Report of the Attorney-General*, 199-211 (1924-1926).

[19] See M. T. Van Hecke, "Pardons in Impeachment Cases," 24 *Michigan Law Review* 657-674 (1926); C. S. Potts, "Impeachment as a Remedy," 12 *St. Louis Law Review* 16 (1926).

[20] *Laws*, 40th Leg., reg. sess., 360-361 (1927).

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING
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Recent Radio Legislation. *International.* The International Convention for the Safety of Life at Sea, and the Regulations annexed thereto, signed at London on May 31, 1929, contain important provisions concerning the installation and use of radio on ships.[1] With certain exceptions, the convention requires the installation of radiotelegraph equipment on all ships engaged on international voyages except cargo ships of less than 1,600 gross tonnage. A passenger ship is defined as one carrying more than 12 passengers, and a cargo ship as any ship which is not a passenger ship. There are detailed provisions in Chapter 4 of the convention concerning watches, watchers, and technical requirements; and that chapter also incorporates by reference the pertinent provisions of the International Radiotelegraph Convention and Regulations signed at Washington in 1927. Of the other articles of the convention which contain stipulations concerning radio, the most important are those relating to meteorological services (Art. 35), distress and alarm signals and distress messages (Arts. 42-45), and direction-finding apparatus (Art. 47). The convention is to come into force on July 1, 1931, as between governments which have deposited their ratifications by that date, provided at least five ratifications have been deposited.

It is apparent on the face of the safety-of-life-at-sea convention that great care was used to prevent conflicts between it and the International Radiotelegraph Convention. The Final Act contains a number of suggestions for changes in the latter convention, addressed to the signatories of that instrument. The new safety-of-life-at-sea convention marks a substantial advance over the 1914 convention on the same subject, which never came into force and is not well adapted to

[1] The report of the delegation of the United States, published as Conference Series No. 1, of the Department of State, contains the text of the Convention, Regulations, and Final Act. The Convention was signed by Germany, Australia, Belgium, Canada, Denmark, Spain, Irish Free State, United States of America, Finland, France, Great Britain and Northern Ireland, India, Italy, Japan, Norway, Netherlands, Sweden, and the Union of Socialist Soviet Republics.

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present conditions. In its radio provisions, it sets higher standards than does the 1912 act which provides for radio installations on American ships. Recommending the favorable reception of the convention by the United States, the American delegation in its report states with reference to the chapter on radiotelegraphy: "The whole effect of this chapter of the convention, in the opinion of your delegation, is to elevate the legal standards of the world and of the United States."

Article 5 of the General Regulations annexed to the Washington Radiotelegraph Convention contains a table showing the allocation of frequencies to the various types of radio services. The European Radio Conference held at Prague, April 4-13, 1929, had as a major purpose the further allocation of the frequencies in the European broadcast band among the several European countries.[2] Some frequencies not allocated to broadcasting in the 1927 Regulations were assigned to that service by the Prague conference, due largely to the fact that the Soviet government did not participate in the Washington conference and did not consider itself bound by decisions reached at Washington, and to the further fact that the Washington Regulations permit assignments of frequencies for services other than those designated in the Regulations, subject to the condition that the assignment shall not cause interference with services for which the particular band was designated in the Regulations. The assignment of frequencies for broadcasting, which became effective on June 30, 1929, involved a total of 144 channels, of which 129 are exclusive to particular countries and 15 are shared by two or more countries.

The plan adopted appears to reflect a desire to accommodate the existing broadcasting stations and to assign them the frequencies upon which they had been operating, rather than an adherence to engineering principles. The frequency separation most often used was 9 kilocycles, though assignments were made as close together as 4.5 kilocycles and as far apart as 47 kilocycles. In view of the conflicting demands

[2] *Documents de la Conférence Radioélectrique Européenne de Prague, 1929*, published by the International Bureau of the Telegraph Union. The final protocol was signed by representatives of the following administrations: Germany, Austria, Belgium, Bulgaria, Denmark, Spain, Estonia, Finland, France, Great Britain, Hungary, Irish Free State, Iceland, Italy, Latvia, Monaco, Norway, the Netherlands, Poland, Roumania, Kingdom of the Serbs, Croats and Slovenes, Sweden, Switzerland, Czechoslovakia, Turkey, and Union of Socialist Soviet Republics. The United States and the Dutch East Indies had observers at the conference.

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of states as close together geographically and as nationalistic as those in Europe, the assignment of broadcast frequencies is a complicated matter. One result of that situation was the adoption by the conference of a resolution suggesting that the administrations study a better arrangement of frequencies to permit an increase in the number of frequencies available for broadcasting—clearly presaging a determined effort to extend the broadcast band when the next international radiotelegraph conference meets at Madrid in 1932.

In addition to the allocation of frequencies (known as the Prague Plan), the final protocol contains provisions on a number of other matters. The International Radiophone Union, an organization of European broadcasting agencies, was officially recognized by the participating administrations and was made an important factor in determining changes which may later be made in the Prague Plan. The Belgian government was requested to arrange for the measurement of the waves of all European broadcasting stations. The protocol contains a number of resolutions requesting the administrations to take specific steps to insure more satisfactory broadcast transmission and reception. The principal tasks before the conference were of interest primarily to European states; but the adoption of a list of questions which it was suggested that the International Technical Consulting Committee on Radio Communications (commonly known as the C.C.I.R.) study at its meeting scheduled for The Hague in September was of interest to the observers from the United States also.

That committee, which was provided for by Article 17 of the Washington convention and Article 33 of the General Regulations annexed to that convention, held its first meeting at The Hague, September 18-October 2, 1929, with sixteen questions, most of them of a very technical nature, on its agenda.[3] The committee's function is limited to giving advice on technical questions which it has studied. Among the problems on the agenda were the definitions of various terms; measures to standardize frequency meters; the tolerance permissible for the difference between the mean frequency of missions and the notified frequency; the width of the frequency band; the necessary separation between two successive frequencies; and others of like character. The delegations were largely composed of technical experts; their conclu-

[3] For a discussion of the controversy over the creation of the committee, see an article on "The International Radiotelegraph Conference of Washington" in 22 *Amer. Jour. Int. Law* 28-49, at pp. 45-46.

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sions, based upon the best present engineering practice and the reasonable expectations for the near future, will undoubtedly assist in securing higher and more nearly universal standards of radio transmission and reception and in making available a larger number of communication channels. The standards set by the committee are important because of the decision of the participating administrations to endeavor to obtain national acceptance of them, and because of the great weight which will undoubtedly be given them in the radio-telegraph conference which is to meet in 1932. The C.C.I.R. is not a permanent body; at the meeting at The Hague it was decided that not even a permanent secretariat was authorized, the International Bureau of the Telegraph Union serving in that capacity. The next meeting of the committee is to be held at Copenhagen in 1931. The Hague meetings placed seven questions on the agenda of the Copenhagen session; others may be added later by the participating administrations.

At the International Radiotelegraph Conference of Washington in 1927 a committee was appointed to look into the matter of revising the international code of signals, bringing it up to date, providing better facilities for intercommunication by the vessels of diverse nationalities and, in general, perfecting the code which by that time had become more or less obsolete. The recommendations made by the committee appointed to consider the matter were approved by the conference and, as a result, for the past year an international committee has been holding meetings in London. The new code will permit of intercommunication in English, French, Italian, German, Japanese, Spanish, and one of the Scandinavian languages. The arrangement will be such that, for example, the master of an English vessel can prepare a code message in his own language and transmit it to the master of a French vessel, who will decode the message directly into the French language without the intermediate step of translation. This will provide a great facility for the exchange of important information between vessels, in whatever part of the world they happen to be. The new code will be a rather extensive work and will be provided with every possible safeguard for accurate communication in code.[4]

National. While a number of measures pertaining to radio have

[4] The writer is indebted to Major William F. Friedman, cryptanalyst in the office of the Chief Signal Officer, for the information concerning the international code of signals.

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been introduced in the Seventy-first Congress, only one had become law by the time this note was written (June 1). The most important of the bills which have been discussed, but not passed, is the Couzens bill (S. 6, 71st Cong., 1st sess.) for the regulation of the transmission of intelligence by wire or wireless. That measure contains the most comprehensive regulations concerning radio ever seriously considered by a congressional committee. The regulations center about a proposed new communications commission. It does not seem advisable to outline the provisions of the measure at this time, for the bill will probably be rewritten as a result of public hearings and still further changed on the floor of Congress. Public hearings were held by the Senate committee on interstate commerce at various times between May 8, 1929, and February 8, 1930, and the record of those hearings, printed in fifteen parts, contains much valuable and hitherto inaccessible information concerning radio operations.

The second bill, which placed the original jurisdiction of the Federal Radio Commission upon a permanent basis, passed both houses and was approved by the President on December 18, 1929 (Public No. 25). The 1927 act had given the commission original jurisdiction for a single year; amendments in 1928 and 1929 had extended that jurisdiction until December 31, 1929, and the annual salaries of the commissioners until March 16, 1930. The present act provides that, wherever any reference is made in the 1927 act to the period of one year from the first meeting of the commission, this period is extended until such time as is otherwise provided by law. There is a similar extension of the period during which the commissioners are to receive annual salaries of $10,000. The effect of the act is to introduce an element of permanency into the organization charged with the administration of the radio act. The new law also greatly improves the situation of the commission from an engineering standpoint. Until its passage, the commission was forced to borrow engineers from other branches of government service. The commission is now authorized to appoint a chief engineer at a salary of $10,000 a year, two assistants to the chief engineer at $7,500 each, and such other technical assistants as it may from time to time find necessary and as may be appropriated for by Congress.

State. A pamphlet written by two members of the legal division of the Federal Radio Commission outlines state legislation in the field

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of radio prior to the spring of 1929.[5] There has been little state radio legislation of general interest since that time.

By a resolution approved May 10, 1929 (S. Conc. Res. No. 22, Stats., 1929, p. 2225), the legislature of California directed the state railroad commission to make a complete study of interference with radio broadcasting reception in the state of California caused by the operation of high voltage transmission lines and other electric lines, equipment, and devices, and to present its conclusion, with recommendations for eliminating or mitigating such radio interference, in a report to be filed with the governor not later than December 1, 1930.

A South Dakota act approved March 13, 1929 (*Laws,* 1929, ch. 196), empowers municipal corporations to regulate the installation and operation of motors and other electrical and mechanical devices so as to prevent interference with radio reception.

By an act approved May 15, 1929 (*Public Acts,* 1929, No. 152), the Michigan legislature authorized the state administrative board to establish one or more radio broadcasting stations to be used for police purposes only. Each sheriff is to receive without cost a receiving set, to be maintained at the expense of the county; and cities may purchase from the state at cost receiving sets for police purposes. The commissioner of the department of public safety is to broadcast "all police dispatches and reports submitted, which in his opinion shall have a reasonable relation to or connection with the apprehension of criminals, the prevention of crime, or the maintenance of peace and order in this state, it being the intention of this act to aid and assist peace officers in the discharge of their duties." The telegraph and telephone companies are directed to give priority to messages or calls addressed to the broadcasting station. No person may equip an automobile with a short wave length receiving set, or use an automobile so equipped unless such automobile is used or owned by a police officer, without first securing a permit to do so from the commissioner of the department of public safety. Violation of the immediately preceding provision is a misdemeanor, as is also the willful making to the state broadcasting station of any false, misleading, or unfounded report for the purpose of interfering with the operation of the station, or with the intention of misleading any peace officer in the state.

Much more comprehensive than any of the foregoing is a New

[5] "State and Municipal Regulation of Radio Communication," by Paul M. Segal and Paul D. P. Spearman (Washington, Government Printing Office, May, 1929).

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Jersey law approved March 18, 1930 (*Laws of 1930,* Chap. 15), which has as its opening sentence: "No radio broadcasting station or transmitter shall be constructed or operated in this state unless and until a certificate of public convenience and necessity therefor shall have been granted by the Board of Public Utility Commissioners." The board is authorized to grant the certificate if, after hearing, it finds that public safety and convenience will be served by the erection and operation of the station or transmitter, and that its operation will not cause undue or unreasonable blanketing or interference with radio transmission and reception. The board may incorporate in the certificate such reasonable restrictions and conditions as it may deem necessary or proper to avoid undue or unreasonable blanketing or interference. The application for the certificate must set forth such information as the board may require, including the frequency and power to be used, hours of operation, type of apparatus, etc. No certificate of public convenience and necessity, nor any license or privilege arising therefrom, may be transferred without the approval of the board. Upon receipt of any application under the act, the board is to give notice to the clerk of the municipality where the station is to be located, and to the owners of all existing radio broadcasting stations or transmitters within the state.

The act exempts existing broadcasting stations and transmitters from the requirement of a certificate of public convenience and necessity, but applies "to any future transfer of any existing broadcasting station or transmitter and to any change in the existing power, wave length, frequency, or hours of operation of an existing broadcasting station or transmitter," with the exception of certain municipal stations. Violation of the act, or of any conditions or restrictions imposed by the board in any certificate of public convenience and necessity, is subject to a penalty of $100 for each day during which the violation continues. The attorney-general is also authorized and directed to institute proceedings for an injunction to restrain the erection or operation of any broadcasting station or transmitter, or the transfer thereof, or the assignment or transfer of any certificate of public convenience and necessity, in violation of the provisions of the act. The New Jersey act traverses much of the ground covered by the radio act of 1927; and it is difficult to see how it can be applied in its entirety without coming into conflict with the federal provision.

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STATE CONSTITUTIONAL LAW IN 1929-1930

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A. AMENDMENT OF STATE CONSTITUTIONS

State courts determine, in the absence of constitutional provision to the contrary,[1] whether amendments to state constitutions have been proposed and adopted in the manner provided for these constitutions.[2] Not every minor deviation from the course of action marked out in the constitution for its amendment is deemed sufficient to justify the court in declaring that the amendment has been "unconstitutionally adopted," but whether these deviations are serious enough to warrant such a declaration is a question to be determined by the courts themselves.[3] Statutes supplementing constitutional provisions on the subject of amendment are valid if not in conflict with the constitutional provisions themselves, and substantial compliance with these rules is also required by the courts.[4] Sometimes the provisions regulating the subject of publication of proposed amendments are constitutional; at other times they are statutory. In either case, publication in the manner provided for, and for the period of time provided for, is necessary to the validity of the amendment. Publication for two weeks, when the period should have been four weeks, was deemed sufficient by the Nebraska court to invalidate the amendment involved.[5]

An amendment providing for an issue of bonds for the financing of a highway system, and also including details of the location of highways and specifications of uses to which certain funds should be put, was held by the Missouri court not to conflict with Art. XV, Sect. 2, of the constitution of that state, which provides that "no proposed amend-

[1] Some state constitutions provide that certain officers other than judges shall determine whether or not an amendment has been adopted by the required number of votes, and in these states the courts will not determine the question. For a discussion of this problem, see McClurg v. Powell, 77 Miss. 543, 27 So. 927 (1900).

[2] Board of Liquidation v. Whitney-Central Trust & Savings Bank, 122 So. 850 (La., 1929).

[3] Middleton v. Police Jury, 125 So. 447 (La., 1929).

[4] State v. Cline, 224 N. W. 6 (Neb., 1929).

[5] *Ibid.*

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ment shall contain more than one subject and matters properly connected therewith."[6] The court felt that these items were "properly connected," and that they constituted parts of one general scheme of highway improvement and financing. The inclusion of details which are ordinarily left to statute was held not to be fatal to the amendment.

Art. XX, Sect. 1, of the Idaho constitution provides that it shall be the duty of the legislature to submit amendments to the electors of the state at the next general election following their proposal, and cause the same to be published. Publication in accordance with this provision was held insufficient to cure a defect in submission, the defect being that the legislature had proposed an amendment fixing the terms of certain officers at four years, while the question submitted to the voters was whether the terms of office should be limited to four years.[7]

B. STRUCTURE AND FUNCTIONS OF GOVERNMENT

1. Separation of Powers. The Louisiana court refused to decide whether the state had a republican form of government, and in so doing affirmed an old principle, that the determination of this question is political, not judicial.[8]

Another example of judicial hesitance in exercising power deemed properly not to belong to the judicial branch of government is that of refusing in criminal cases to fix penalties which are different from those fixed by the legislature. The Texas court refused to overturn the verdict of a jury in Allen v. State,[9] because, among other things, by so doing it would be changing penalties.

However, the Colorado court felt that the legislature had interfered unduly with the prerogative of the judiciary to decide legal disputes when it was asked to uphold a statute which directed the courts to grant a divorce on the application of either party to a marriage. Under this statute, the guilty party as well as the innocent one could petition for a divorce, and this seemed to the court to be so contrary to the fundamentals of good public policy that it declared the statute unconstitutional, although the opinion gives no convincing indication that there was anything in the constitution with which the legislation

[6] State ex rel. Highway Comm. v. Thompson, 19 S.W. (2d) 642 (Mo., 1929).
[7] Lane v. Lukens, 283 Pac. 532 (Ida., 1929).
[8] Borden v. La. State Bd. of Educ., 123 So. 655 (La., 1930).
[9] Allen v. State, 21 S.W. (2d) 527 (Tex., 1929).

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in question came into conflict.[10] To the writer, the dissenting judges won the argument, but not the case. In Kansas, legislation regulating the procedure to be followed in disbarring attorneys was upheld, despite the fact that the courts had only ministerial functions to perform in entering the order of disbarment, once the grounds for disbarment were established—in the particular case by conviction of crime.[11]

The county court in Illinois can be given supervision over judges of election and may discipline them by proceedings for contempt.[12] Arizona courts will not render declaratory judgments unless such judgments will put an end to the uncertainty giving rise to the dispute sought to be settled by the judgment. In the instant case, the judgment was refused because not all interested parties were shown to have been joined in the action. The constitutionality of the Uniform Declaratory Judgments Act as adopted by the Arizona legislature was affirmed by this same decision.[13]

In Smith v. Patterson,[14] a statute giving to the state board of education power to allocate funds to the various schools under its control was sustained against the objection that the function of allocating funds to schools was essentially a legislative function. Another case involving the delegation of legislative power to an administrative body was State v. Moorer,[15] in which the supreme court of South Carolina held invalid a statute giving to the highway commission a choice between two alternative methods of financing a highway building project. The court distinguished this type of statute from that in which a designated event was to occur before specified official action should be engaged in, saying that the latter type of statute was valid, while the former, i.e., the type of statute involved in this case, was invalid. The court formulated its explanation of the reason for the decision in the statement that the "act" was not "complete" when it left the hands of the lawmakers. This, of course, is only an indirect

[10] Walton v. Walton, 278 Pac. 780 (Colo., 1929). See Caylor v. State, 121 So. 12 (Ala., 1929).

[11] *In re* Casebier, 284 Pac. 611 (Kan., 1930).

[12] People v. Wortman, 334 Ill. 298, 165 N.E. 788 (1929). See People v. White, 334 Ill. 465, 166 N.E. 100 (1929).

[13] Morton v. Pac. Constr. Co., 283 Pac. 281 (Ariz., 1929).

[14] Smith v. Peterson, 279 Pac. 27 (Ore., 1929).

[15] State v. Moorer, 150 S.E. 269 (S.C., 1929).

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method of saying that the act left to the highway commission too much leeway in the formulation of the policy to be pursued in financing the highway.

As to the problem of delegating powers to local communities, the Indiana court held that the combination of executive and legislative functions in a single municipal organization is permissible, sustaining at the same time the city manager statute against the contention that it violated the separation-of-powers provision of the Indiana constitution, and that it delegated to the voters the power to determine whether it should take effect. The court stated that the statute was complete when it left the hands of the legislature; that the taking of a vote was an event upon which certain action under the statute was to be predicated; and that the statute took effect immediately upon its enactment, the vote on the part of the municipal electorate adding nothing to the law.[16] A city council can be given authority to fix values in condemnation proceedings, and this is not an unconstitutional delegation of judicial power to the council.[17] This is in part a legislative function, according to the court, although it is sufficiently non-legislative in character so that it could be appealed from to a court, but on the other hand not so judicial but that it could be given to a council.

2. **The Judiciary.** Several statutes were declared unconstitutional by state courts during the past year, and the problem of the effect of such decisions was considered in some of the cases. One of them, an Indiana case,[18] held that an amendment of 1929 could not save a statute enacted in 1921, although the 1921 statute was not declared unconstitutional until after the amendment had been enacted into "supposed" law by the legislature. This is an extreme decision, and applies the void *ab initio* doctrine to its logical conclusion. The cases on this point are not in harmony, some courts holding exactly opposite to the instant case.[19]

Several questions concerning the organization and jurisdiction of state courts were decided during the past year, among them one in Georgia relative to the term of the county ordinary. The constitution

[16] Sarlis v. State, 166 N.E. 270 (Ind., 1929). But see the later case, holding the statute invalid on other grounds, *infra* note 51.

[17] *In re* Improvement of Third Street, 225 N.W. 86 (Minn., 1929).

[18] Keane v. Remy, 168 N.E. 10 (Ind., 1929).

[19] The author is at present preparing a study of curative and amendatory statutes and the effect of an unconstitutional statute.

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of Georgia provides that in addition to the fixed term these officers shall hold office until their successors are elected and qualified. What should be done if an ordinary is ousted by *quo warranto* proceedings? The Georgia court held that he retained office until a successor qualified.[20] In Texas, "all officials within the state shall continue to perform the duties of their offices until their successors shall be duly qualified," and this was applied to the office of judge.[21] The constitutional four-year term of Texas judges cannot be cut short by a statute reorganizing a judicial district.[22]

Vice-chancellors in New Jersey may be appointed by the chancellor, in accordance with statute, and this is not an unconstitutional interference with the governor's power of appointment. The constitution does not specifically refer to vice-chancellors, and they are appointed as common law officers by the chancellor, chancellors at common law having exercised this power. The statute was merely declarative, therefore, of a common law practice which had not been prohibited by any constitutional provision.[23]

A statute conferring on the Appellate Court in Illinois power to give a final judgment in contract cases was upheld, but the court pointed out that an opportunity for further review, by the supreme court of the state, of questions involving constitutional rights must be afforded, and that such an opportunity existed in the common law writ of error.[24] Where an appellate court is given appellate jurisdiction by the constitution, either expressly or impliedly including *certiorari*, the legislature cannot substantially interfere with this jurisdiction,[25] and prescribing too brief a period of time in which the writ may be asked for is a substantial interference. The same result was reached as to the writ of prohibition in Utah, where the legislature was held not to have the power to control the use of this writ, the common law rules governing instead.[26]

A Texas case involved a statute which provided that justices of the peace should receive fees only in cases of conviction if the case

[20] Lee v. Byrd, 151 S.E. 28 (Ga., 1929).
[21] Hardaway v. State, 22 S.W. (2d) 919 (Tex. Crim. App. 1929).
[22] State v. Manry, 16 S.W. (2d) 809 (Tex., 1929)
[23] *In re* Vice Chancellors, 148 Atl. 570 (N.J., 1930).
[24] Brown v. Kienstra, 169 N.E. 736 (Ill., 1930).
[25] Palmer v. Johnson, 121 So. 466 (Fla., 1929).
[26] Barnes v. Lehi City, 279 Pac. 878 (Utah, 1929).

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were criminal. This was said by the court to be an attempt indirectly to destroy the justice of peace courts.[27] In Michigan, it was held that the legislature could not deprive the courts of the power to decide whether in a negligent homicide case the driver was going at an immoderate rate of speed, the statute being declared invalid because it provided that this question should be left to the jury.[28]

Contempt. Few significant cases of contempt have appeared in the recent reports. In Illinois, it was held that the county court could be given supervision over election officials and could punish their misbehavior by proceedings in contempt;[29] in Kentucky, officers of a county were punished for refusing to pay a claim resulting from a judicial decree for compensation for certain services which had been performed, the decree being in accordince with statute, and the plea of insufficient money in the treasury to pay other obligations was held inadequate to purge of contempt;[30] while in Oklahoma one case held that the legislature could regulate the procedure to be followed in cases involving civil contempts.[31]

3. The Legislature. The constitution of Oregon provides in Art. IV, Sect. 29, that the compensation of legislators shall be three dollars per diem, and fixes a maximum sum of one hundred and twenty dollars per session. Specified allowances are made also for traveling expenses. The last session of the legislature tried by joint resolution to increase the allowance of its members by authorizing the payment to each of them of five dollars per diem for incidental expenses. A taxpayer succeeded in having this declared unconstitutional.[32] The court felt that although the salary fixed by the constitution is inadequate, it was not warranted in sustaining an increase in this indirect manner, because if the framers of the constitution had wished to include such allowances they would have mentioned them, having mentioned traveling expenses. Art. V, Sect. 49, of the Oklahoma constitution forbids increase in either the number or salaries of employees of the legislature except by a general law, which cannot take effect during the session in which it is enacted. The supreme court of

[27] *Ex parte* Richmond, 14 S.W. (2d) 851 (Tex. Crim. App. 1929).
[28] People v. McMurchy, 238 N.W. 723 (Mich., 1930).
[29] People v. White, 334 Ill. 465, 166 N.E. 100 (1929).
[30] Livingston County v. Crossland, 299 Ky. 733, 17 S.W. (2d) 1018 (1929).
[31] *Ex parte* Morse, 284 Pac. 18 (Okla., 1930).
[32] James v. Hoss, 285 Pac. 205 (Ore., 1930).

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the state held that this did not apply to the case of the senate while sitting as a court of impeachment—that this restriction operated upon the legislature as a legislative, i.e., a law-making body, and not upon it as a judicial body.[33]

The provision of the Tennessee constitution that "no senator or representative shall, during the time for which elected, be eligible to any office or place of trust, the appointment to which is vested in the executive or general assembly, except to the office of trustee of a literary institution," was held to prevent a member of the legislature from becoming a member of a road board, the board having charge of the location, financing, and building of certain county roads in the state.[34]

Legislative declarations of emergencies with a view to withdrawing legislation from the operation of the referendum are forbidden in some state constitutions as to certain subjects, e.g., taxation. But such a declaration does not always operate to vitiate the entire statute if it is otherwise valid.[35] In other states, tax laws may be declared to be emergency measures, and the courts will in this case decide whether an emergency really existed; and the immediate need of money with which to operate state institutions was held in Arkansas to constitute a proper reason for declaring an emergency to exist.[36]

The power of legislative bodies to summon witnesses to testify before investigating committees was before the California court in *ex parte* Batelle.[37] The legislature was investigating an alleged cement trust and certain witnesses refused to appear for examination. The court upheld the power of the legislature or one of its committees to declare the recalcitrant witness in contempt, but ruled that the witness must be given an opportunity to appear and purge himself of contempt. The order issued by the legislature in contempt proceedings must recite the facts and reasons for punishment, not merely the conclusions of the committee or house.[38]

4. **The Administrative Branch.** The constitution of Florida provides that state officers must be either elected by the people or ap-

[33] Shaw. v. Grumbine, 278 Pac. 311 (Okla., 1929).
[34] State v. Phillips, 159 Tenn. 546, 21 S.W. (2d) 4 (1929).
[35] Smith v. Peterson, 279 Pac. 27 (Ore., 1929).
[36] Stanley v. Gates, 19 S.W. (2d) 1000 (Ark., 1929).
[37] People v. Borgeson, 335 Ill. 136, 166 N.E. 451 (1929).
[38] *Ex parte* Batelle, 277 Pac. 738 (Cal. 1929).

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pointed by the governor. This was held to prevent the appointment of a state veterinarian by the Live Stock Sanitary Board, because the state veterinarian is an "officer."[39]

Several Kentucky cases helped clarify the rules regulating the power of the governor of that state to appoint and remove officers. In Bell v. Sampson,[40] the court of appeals of that state held (1) that the senate has notice of interim appointments which have been made by the governor during a recess of the senate; (2) that the failure of the senate to act on an appointment by the governor does not constitute senatorial confirmation; (3) that senatorial confirmation is required unless the statute clearly dispenses with it; and (4) that the office to be filled by appointment becomes vacant in case the senate at its next session does not act on the appointment. In McChesney v. Sampson,[41] it was held (1) that the power to remove would not be implied from the power to appoint, in the case of the governor, unless the term of office was indefinite and the power to appoint general, and no other method of removal existed; (2) that a statute giving to the governor the power to remove an officer with the consent of the senate did not apply to appointments not confirmed by the senate; (3) that an appointee holding office under a statute providing that the senate should act on the appointment at its next session actually holds the office, and that unless the governor is clearly given the power to remove him the appointee holds the office until the end of the following session of the senate; and (4) that the governor could fill the office after the following senatorial session had ended without action being taken on the appointment because of the vacancy thus resulting, but that the person appointed to fill this vacancy could not then be removed by the governor until the end of the next following session of the senate. In Votteler v. Fields,[42] a case decided in 1926, but not reported until this year, the same court held, with respect to the rules governing removal, that the rules stated in the cases previously discussed applied to another office. This case was really a precedent for the court in the McChesney and Bell cases.

In Minnesota, the governor is authorized by statute to remove, for cause shown, a number of county officers, among them the county

[39] McSween v. State Livestock Sanitary Board, 122 So. 239 (Fla., 1929).
[40] Bell v. Sampson, 232 Ky. 376, 23 S.W. (2d) 575 (1930).
[41] McChesney v. Sampson, 232 Ky. 395, 23 S.W. (2d) 584 (1930).
[42] Votteler v. Fields, 232 Ky. 322, 23 S.W. (2d) 588 (1926).

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attorney. This power was held to be a discretionary one, not of a ministerial nature, and as a result the governor could not be compelled by mandamus proceedings instituted by a private individual to remove a county attorney.[43]

The power to remove is in a sense an executive power and is closely linked with the power of appointment and the power of supervision, both of which are normally considered executive functions. The removal power, however, is sufficiently judicial in its characteristics, especially if preceded by notice and hearing, to justify a court in reviewing a removal proceeding, even if the act of removal be one performed by the governor. It is sufficiently judicial to permit this, but not so judicial that the governor cannot perform it.[44] Removal from office does not, in the absence of specific provision to the contrary, disqualify the person removed from becoming his immediate successor.[45] Parish registrars in Louisiana are in some cases appointed by the police jury. If the jury does not do so, the governor may make the appointment. The governor, acting in conjunction with two other officers, may remove them. In the instant case, the registrar had been removed. The police jury thereupon appointed the ousted person to the office from which he had been ousted. Subsequently the governor appointed another person to the same office. The court, in conformity with the rule just stated, held that the police jury could make the appointment, the removed person not being disqualified from holding the office from which he had been removed. The possible *impasse* which could thus occur between the state and local authorities was recognized, but the court felt that this would have to be remedied when it came about, if it could be, by holding that stubborn action would not be permitted, or by political action of some sort.

In Montana, the legislature imposed certain oil testing duties upon the head of the chemistry department of the state college of agriculture and mechanic arts. This was sustained, the court saying that such a function was not inconsistent with the purposes of an educational institution of this type, and pointing out also that the legislature was given wide control over the higher institutions of learning of the state. The fact that no provision had been made for compensating an assistant for this extra work was not fatal, because the head of the department

[43] State v. Christianson, 229 N.W. 313 (Minn., 1930).
[44] State v. Ballentine, 150 S.E. 46 (S.C., 1929).
[45] State ex rel. Arceneaux v. Breaux, 125 So. 283 (La., 1929).

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had adequate help as it was, and the statute did make provision for payment of the laboratory expenses of testing. The court decided also that the money to meet these additional expenses could be paid from a fund made up from license fees collected from operators of gas stations, some question having arisen as to whether money from this fund could be used without the permission of the public service commission.[46]

Members of the board of higher education of Oregon can hold office for more than four years, because they are not officers.[47]

Soldiers' preference laws were considered in a Massachusetts[48] and a California[49] case. Courts do not agree on the validity of these laws, but they are usually upheld if the preference is so phrased that qualifications connected with the position to be filled are not entirely disregarded. However, if the statutes give an absolute preference, irrespective of qualifications, they are sometimes held invalid.

A Montana case involved the provision of the constitution of that state which restricts the legislature in giving state administrative officers the power to supervise or interfere with any municipal function. It was held that this does not prevent the state fire marshal from exercising statutory power in municipalities to condemn buildings which are fire traps. This restriction does not apply to the performance of state police functions, said the court, but only to the proprietary functions of the city.[50] The Indiana city manager law of 1921, as amended in 1929, was declared invalid in Keane v. Remy,[51] partly on the ground that it gave to the city clerk judicial power when it imposed upon him the duty to decide whether signers of petitions for an election to vote on the adoption of the city manager plan were qualified electors, and partly on the ground that it was impossible for him to perform the work allotted to him by statute and for the performance of which it provided no help, and finally because it gave to some citizens some privileges and immunities which it did not give to others, contrary to Art. IV, Sect. 23, of the state constitution. The

[46] State v. Brannon, 283 Pac. 202 (Mont., 1929).

[47] Smith v. Patterson, 279 Pac. 271 (Ore., 1929).

[48] Cook v. Mason, 283 Pac. 891 (Cal. App. 1929).

[49] City of Lynn v. Commr. of Civil Service, 169 N.E. 502 (Mass., 1929). See for a general discussion of this topic, 28 *Mich. L. Rev.* 614.

[50] State v. Cook, 276 Pac. 958 (Mont., 1929).

[51] Keane v. Remy, 168 N.E. 10 (Ind., 1929).

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opinion seems to the writer to be very weak; the dissenting opinion is much the more convincing of the two.

Pardon. According to a South Carolina case,[52] a pardon obtained by fraud cannot be revoked, once it is delivered, the court treating a pardon as though it were a deed; while a Kentucky case holds that a pardon obtained by fraud can be set aside by the judiciary.[53] Two problems arise in this type of case; one deals with the separation of powers, i.e., the relation of the executive to the judiciary, and the other deals with the similarity of a pardon to a deed. The view of the Kentucky court that judicial action nullifying a pardon obtained by fraud is not an interference with the executive seems sound, and on the other hand the view (recently taken by the Supreme Court of the United States also) that a pardon is not to be considered as a deed, but as an act of importance to society, as well as to the particular individual involved, appeals to a student of government. Whether or not a pardon can be revoked should not depend upon the technical rules governing delivery of evidences of title to property, but rather upon questions of social policy with respect to persons convicted of crime.

5. Finance and Taxation. In People v. Tremaine,[54] the New York Court of Appeals invalidated a statute providing that the chairmen of designated committees in the two houses of the legislature should act with the governor in approving segregations of lump-sum appropriations, partly because the statute conferred administrative power on members of the legislature, thus being contrary to Art. III. Sect. 7, of the constitution. The heads of departments, as a result, were left in charge of the allotment of funds, excepting the particular fund to be used for buildings for which this special commission had been created.

The issuance of certificates of indebtedness in anticipation of appropriated income was held in Alabama not to create a new debt. The money for the institutions involved had been appropriated for a four-year period, but was made available in annual installments. To anticipate this income, said the court,[55] was not to create a new debt. The

[52] *Ex parte* Bess, 150 S.E. 54 (S.C., 1929).

[53] Adkin v. Commonwealth, 23 S.W. (2d) 277 (Ky., 1929).

[54] People v. Tremaine, 252 N.Y. 27, 168 N.E. 817 (1929). See the analysis of this and the several other points in this case, in Crawford "The Executive Budget Decision in New York," in this *Review*, vol. 24, p. 403.

[55] *In re* Opinions of Justices, 126 So. 161 (Ala., 1930).

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plan recently adopted by several state universities and colleges whereby dormitories are financed privately to begin with, but leased and sold to the school through the payment of so-called rent, was again sustained, this time by the North Dakota court.[56]

Taxation. Land held by a state university is exempt from taxation, even though it is leased to a private corporation for business purposes. Exemption from taxation is usually construed strictly against the person claiming it, but when the exemption is in favor of a governmental institution the rule is not applied. The title, not the purpose to which land is put, is the test, according to the Wisconsin court.[57] The Idaho court upheld an exemption by statute of a power company engaged in furnishing power for irrigation projects. Neither did this constitute a lending of credit to the company.[58]

A somewhat intricate case is that of Eyers Woolen Co. v. Town of Gilsum.[59] A New Hampshire statute exempting a proposed woolen mill from taxation for ten years was approved by the voters of a town, but the state tax commission notified the owners of the mill that they believed the statute to be invalid. The owners proceeded to build the mill and asked for an abatement of taxes. The statute was subsequently held to be invalid because the exemption was not for a public purpose and because it loaned the aid of the town to a corporation organized for "dividend or profit." The tax could be collected. The court distinguished this case from others in which the town was not permitted to tax, despite the invalidity of the exemption statute, by pointing out that here there was a prior valid tax law, while in those cases there had not been any such law. Because of the notice of alleged invalidity received from the tax commission, the doctrine of estoppel would not apply.

Art. VIII, Sect. 9, of the New York constitution provides that no public money shall be used for private undertakings, and under this provision the courts will determine whether a sufficient moral obligation exists to warrant payment to a private individual of a claim presented by him against the state. The New York Court of Claims

[56] State v. Davis, 299 N.W. 105 (N.Dak., 1930).

[57] Aberg v. Moe, 224 N.W. 132 (Wis., 1929).

[58] Williams v. Baldridge, 284 Pac. 203 (Ida., 1930). See Guttierrez v. Middle Rio Grande Conservancy District, 282 Pac. 1 (N. Mex., 1929), upholding a statute creating an irrigation district and providing a system of financing its operations.

[59] Eyers Woolen Co. v. Town of Gilsum, 146 Atl. 511 (N. Hamp., 1929).

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held that, in order to justify the payment of tax money to satisfy moral obligations on the part of the state, the state must have received a benefit which had not been compensated for, or injury or wrong must have been done by the state. Counsel fees paid by an officer for defending himself against charges of inefficiency in office were held not to constitute a proper payment for the state to make.[60] However, this case agrees with the California case of Reclamation Board v. Riley[61] that the state may pay debts not legally binding upon it.

A problem now faced by an increasing number of states is that arising from the inability of many localities to support the various governmental services now ordinarily performed by governmental units. In some states, two or three counties pay into the state treasury over half of all the money collected in taxes by the state government, and this money is then distributed to the various impecuneous localities in the form of subsidies, or "state-aids," of one sort or another. In Minnesota, the state government sought to relieve some of the northern counties of certain obligations incurred in the furtherance of drainage projects which were, presumably, of some value to the entire state. The method of relief was that of the assumption of these obligations in connection with the establishment of a state wild-life preserve. The supreme court of the state upheld the statute providing for the inauguration of the plan.[62]

On the other hand, in Florida the gasoline tax must be turned back to the counties in proportion to the amount paid by each county, and may not be paid to the counties on the basis of their bonded debt. The court there said that money paid into the state treasury by one county cannot be taken to help out a less fortunate county. In Florida, county and state taxes are sharply distinguished, and the state may not use its money to pay county debts; but the state may authorize the levy and collection of a county tax, and the fact that the state collects it through the county is not material, just as in determining the nature of the tax it is not material that a state tax is collected through the county because it is the purpose of the tax, not the collecting agency, that determines whether it is a state or county tax.[63] The Arkansas

[60] Hines v. State, 234 N.Y.S. 224, 134 Misc. Rep. 1 (Ct. Cl., 1929).
[61] Reclamation Board v. Riley, 284 Pac. 668 (Cal., 1930).
[62] Lyman v. Chase, 226 N.W. 633 (Minn., 1929).
[63] Amos v. Mathews, 126 So. 308 (Fla., 1930).

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income tax of 1929 was sustained in Stanley v. Gates,[64] one of the main contentions against it, that of lack of equality and uniformity, being overruled. These provisions of the constitution apply to property, but not to income, taxes. The front-foot rule in assessments was said by the Tennessee court to be valid, but only if it worked substantial justice, and is not permissible if substantial discrepancies exist between benefits received and assessments levied.[65]

An Oregon statute was sustained which permitted the county board to remit penalties or interest if by doing so the collection of taxes would be facilitated.[66] The board was to act by general rule, not in individual cases, and the law applied to all counties alike. The delinquent tax problem is becoming increasingly serious in the northwestern and Pacific coast states, and various types of legislative relief are already in evidence.[67]

6. **Local Government.** Numerous cases involving the relation of townships, counties, and municipalities to the state arise each year. This article does not attempt to review the cases in the field of local government or municipal corporations, but the interest which an Oklahoma case should have for students of law and government perhaps justifies brief reference at this point.

Occasional allusion is found in books on municipal government and corporations to the effect that the right of local self-government is preserved to the municipalities of some states under their constitutions, or if not under their constitutions, then in spite of them. An Oklahoma statute authorizing municipalities by a vote of sixty per cent of the voters to lease their municipal lighting plants to private owners was declared invalid, in that it required sixty per cent, more than a majority, of the voters to authorize the lease,[68] The principle of majority rule was thereby read into the constitution by interpretation. The case is of interest also because, in the opinion, the dicta of other cases declaring the right of local self-government are approved. Art. II, Sect. 33, providing that "the enumeration in this

[64] Stanley v. Gates, 19 S.W. (2d) 1000 (Ark., 1929).

[65] City of Rockwood v. N.O. & T.P. Ry., 22 S.W. (2d) 237 (Tenn., 1929).

[66] Livesay v. De Armond, 284 Pac. 166 (Ore., 1930).

[67] See, for Minnesota, vols. 14, p. 44, and 15, p. 51, of *Bulletin of League of Minnesota Municipalities.*

[68] Thomas v. Reid, 285 Pac. 92 (Okla., 1930).

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constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people'' was interpreted to apply to local communities as well as to individuals. The case should serve as the text for many a good lecture on political philosophy as embodied in judicial opinions.

C. RELATION OF GOVERNMENT TO THE INDIVIDUAL

1. **Suffrage and Elections.** Payment of taxes, or certain types of taxes, as a prerequisite to the exercise of the right to vote continues to present difficulties. Payment by check constitutes payment as of the date when the check is mailed to the collector,[69] but payment of the tax after the election is not sufficient to qualify one for office if the requirement for holding office be that one shall be a qualified elector.[70] On this point the cases are not in agreement, some states permitting subsequent payment of taxes to have a retroactive curative effect, or permitting fulfillment of these requirements at any time prior to the taking of the oath of office. In Georgia, registration is a qualification required for voting, and it was held in Lee v. Byrd that payment of taxes after registration does not cure the registration if the latter was void because made too late.[71]

A New York election statute providing that the name of a candidate could be on only one ticket was declared invalid as applied to the case where a candidate had been nominated for the same office by two parties.[72] In Louisiana, it was decided that a voter may vote the straight ticket so far as it contains the names of persons who are candidates for offices listed on that ticket, but this does not prevent him from crossing over to vote on another ticket for candidates for an office not listed on the straight ticket which he voted by a cross-mark at the top. He has not voted for candidates for the particular office omitted from the straight ticket by voting that ticket, and is entitled to one vote for each office for which one person is to be chosen.[73]

The use of voting machines was discussed in an Ohio case, and their use sustained so far as the secrecy of the ballot was concerned; but in this particular case their use had been authorized by a city for

[69] Tonnar v. Wade, 121 So. 156 (Miss., 1929).
[70] Davis v. Teague, 125 So. 51 (Ala., 1929).
[71] Lee v. Byrd, 151 S.E. 28 (Ga., 1929).
[72] Callaghan v. Voorhies, 252 N.Y. 14, 168 N.E. 447 (1929).
[73] Seal v. Knight, 121 So. 632 (La. App., 1929).

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all elections, and this the court held the city had no power to do.[74] A dictum in a Wyoming case intimates that the secrecy-of-ballot provision of Art. VI, Sect. 11, of the constitution of that state does not prevent the voter from telling for whom he voted if he wishes to waive his rights in the matter and thereby aid an investigation of illegal voting.[75]

2. Freedom of Speech and Press. The sedition law of Pennsylvania was upheld in Commonwealth v. Widovich.[76] The extending police power is apparently succeeding in cutting down the scope of the protection afforded one by the freedom-of-speech provision of state constitutions, and it behooves those who wish to defend this phase of personal liberty to demonstrate to those in control of governmental machinery that more is to be gained by society from freedom of expression in this manner than from increased regulation of the individual on supposed behalf of the group.[77] Persons of the most collectivistic tendency in such a subject as the regulation of public utilities are often of the most individualistic opinions with respect to freedom of speech. If they wish to prevent the collectivism of others with respect to the freedom of speech from substantially destroying this privilege, the burden of proving its usefulness to the group apparently rests with them.

A very heartening decision to those championing freedom of speech is that of the City of Albany v. Meyer,[78] wherein the freedom-of-speech provisions were held to protect a person from a libel suit by a city brought because of certain published statements made by defendant concerning the city and its finances. Free criticism of governmental administration was emphasized by the court as a useful privilege.

3. Freedom of Religion. A Sunday theatre-closing law was sustained in Springfield v. Smith,[79] while in Cook v. City of Harrison[80] a tax on hawkers was applied to a vendor of religious books and sus-

[74] State v. Green, 121 O. St. 301, 168 N.E. 131 (1929).

[75] Hamilton v. Marshall, 282 Pac. 1058 (Wyo., 1929).

[76] Commonwealth v. Widovich, 295 Pa. 311, 145 Atl. 295 (1929).

[77] See Goodrich, "Does the Constitution Protect the Freedom of Speech?," 19 *Mich. L. Rev.* 487.

[78] City of Albany v. Meyer, 279 Pac. 213 (Cal. D.C. App. 1st, 1929).

[79] City of Springfield v. Smith, 19 S.W. (2d) 1 (Mo., 1929).

[80] Cook v. City of Harrison, 21 S.W. (2d) 966 (Ark., 1929).

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tained. Apparently the various provisions to be found in nearly every state constitution relative to freedom of religious belief should be understood to refer to *belief*, and not to *activity*. Religious beliefs are fairly well protected, but religious activities are not so well protected.

Among these provisions is to be found, almost always, one forbidding the use of public moneys for religious purposes. In Borden v. State Board of Education,[81] the Louisiana court upheld a statute providing for the purchase by the state of textbooks for children attending public, private, sectarian, and non-sectarian schools.

4. **Imprisonment for Debt.** Not all of the state constitutions contain provisions forbidding imprisonment for debt. Some of them provide, instead, that although a person may be imprisoned for debt, the debtor shall be given his freedom upon turning over his estate for the discharge of his obligations.[82] A statute providing for imprisonment for debt without making provision for liberation under such circumstances is invalid. In Brownwell Corporation v. Ginsky,[83] the Michigan court held that a person could not be imprisoned for failure to pay a sum decreed due on a land contract, because suit at law was available to collect.

If a person refuses to pay a license tax to engage in an occupation, and to engage in it without paying such a tax is made a misdemeanor by statute, he may be jailed in punishment for engaging in the particular occupation without having paid the license fee required; and this is not contrary to the imprisonment-for-debt provision of the Oklahoma constitution.[84]

Failure to support a wife and children;[85] failure to support a bastard child;[86] failure to divulge property located outside the state in supplementary proceedings instituted for the discovery of property;[87] and failure to pay alimony decreed by court[88] may all be punished by jail

[81] Borden v. State Bd. of Educ., 123 So. 655 (La., 1929).
[82] Burman v. Commonwealth, 228 Ky. 410, 15 S.W. (2d) 256 (1929).
[83] Brownwell Corp. v. Ginsky, 225 N.W. 531 (Mich., 1929).
[84] *Ex parte* Marler, 282 Pac. 353 (Okla., 1929).
[85] State v. Redmond, 148 S.E. 474 (S.C., 1929).
[86] Belding v. State, 121 O. St. 393, 169 N.E. 301 (1929).
[87] Reese v. Baker, 123 So. 3 (Fla., 1929).
[88] Franchier v. Gammill, 124 So. 365 (Miss., 1929). Also Roberts v. Fuller, 229 N.W. 163 (Ia., 1930).

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or prison sentences if the statutes so provide, and to do so does not constitute imprisonment for debt.

The reason for these holdings is explained in *Ex parte* Chase,[89] an Oklahoma case, in which a judgment in bastardy proceedings had been secured by a bond, mortgage, and personal note. This constituted a "debt," and for a failure to pay it defendant could not be imprisoned. This "debt" resulted from contract; those mentioned in the preceding paragraph did not—and therein lies the difference between them, because the word "debt" has usually been construed in these cases to apply to contractual debts rather than to court decrees, or to obligations arising out of moral or social relations, or out of general considerations of public policy.

5. **Protection to Persons Accused of Crime.** *Bail.* Unless the death penalty is practically certain to be inflicted by the jury, a person is entitled to bail as of right in Texas, and the burden is on the state to show that the accused should not be granted bail.[90] The New Mexico constitution provides that all persons shall be bailable by sufficient sureties except for capital offenses when the proof is evident or the presumption great. Construing this, the court held that "where a nice weighing of the circumstances might result in a conclusion either way, we do not think that there is a denial of a constitutional right in refusing bail," leaving the question to the honest exercise of discretion on the part of the trial court.[91]

Jury trial. Proceedings for the commitment of a juvenile to an industrial training school are not criminal proceedings, and do not therefore need to be before a jury.[92]

In Louisiana, an important decision from the standpoint of reform of criminal law administration is that of State v. Lange,[93] involving the statute of 1928 providing for a lunacy commission to determine finally the question of sanity at the time the act was committed and at the time of trial. This statute was declared unconstitutional, because a jury should determine that question.

Agreement upon the facts of a case by counsel cannot divest the jury of the power to pass upon the question of guilt under the bad-

[89] *Ex parte* Chase, 284 Pac. 294 (Okla., 1930).
[90] *Ex parte* Tindall, 15 S.W. (2d) 24 (Tex. Crim. App., 1929).
[91] *Ex parte* Wright, 283 Pac. 53 (N.Mex., 1929).
[92] Hall v. Brown, 284 Pac. 396 (Kan., 1930).
[93] State v. Lange, 123 So. 639 (La., 1929).

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check law of North Carolina,[94] and thereby another type of recent legislation had its efficacy lessened.

Absence from the courtroom for a few minutes during the trial can be waived by counsel for the accused upon return to the courtroom,[95] but if a jury trial is to be waived, the statute permitting it must be followed exactly; so that if it provides for the consent of the accused and his counsel, the consent of the counsel alone is not sufficient, but both must declare in open court that they waive the jury, as required by statute.[96]

A juror who had just served on a jury trying a mother for a crime similar to that with which the son was charged is disqualified on the ground of partiality. The facts that the same situation and same witnesses were involved in the case were emphasized by the court, and the opinion also contained an observation that the fact that the juror thinks he can be impartial is not conclusive of his actual impartiality.[97]

6. **Searches and Seizures.** Search may normally not be made without a warrant; but a person can consent to a search, and if this is done no warrant is required. A statement to an officer that he should "go ahead" because he "would not find anything anyway" is sufficient to constitute such consent.[98] If a warrant is obtained on affidavits of private individuals, the truth of the statements made in the affidavits cannot be assailed after the warrant has been executed, providing the warrant is otherwise "fair on its face," according to Vale v. State.[99]

The immunity from search without a warrant is a personal one, and the owner of a house cannot complain if the room of a tenant is searched.[100]

A warrant is not always required, although in normal cases it is necessary. An exception is afforded by State v. Zupan,[101] in which an officer had a tip that a car with liquor in it was coming to a certain

[94] State v. Crawford, 149 S.E. 729 (N.Car., 1929).
[95] State v. Henderson, 122 So. 591 (La., 1929).
[96] People v. Garcia, 277 Pac. 747 (Cal. D.C. App. 2nd., 1929).
[97] Popp v. State, 280 Pac. 478 (Okla. Crim. App., 1929).
[98] Williams v. State, 17 S.W. (2d) 56 (Tex. Crim. App., 1929).
[99] Vale v. State, 277 Pac. 608 (Okla. Crim. App., 1929).
[100] *Ibid.*
[101] State v. Zupan, 283 Pac. 671 (Wash., 1929).

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place. A car drove up and defendant carried a suitcase from it to a hotel. On his way he was stopped by an officer and the suitcase searched. This was held proper. So, too, in the case of a car pulling up to a place where liquor was said to be sold, and into which defendant carried a jug, another jug with liquor in it being left in the car, and the odor of liquor being noticeable to the officer.[102]

A warrant is not needed for the search separately, if one is obtained for arrest, providing the search is incidental to the arrest. To search a building located some distance from the house of the defendant, when the defendant was arrested out in an open yard, is not sufficiently connected with the arrest to constitute "incidental" search.[103]

7. **Suits Against the State.** Individuals can often prevent wrongs due to governmental action from being inflicted upon them by injunction, by habeas corpus, by motions to strike out certain illegally admitted evidence, and by various other methods. Sometimes, however, an individual is unable to prevent the injury, and the problem becomes in such an instance whether any remedy is available to compensate for the injury if it is compensable. Only a few states have even passably adequate systems of compensation for cases arising out of "contract express or implied," but in fewer cases still is there any provision for compensating for injuries which would ordinarily be classed as torts. The tendency of the courts is to construe any remedial legislation on this score very strictly against the individual, contrary to the generally accepted principles with respect to other types of remedial legislation.

"An action respecting the title to property or arising upon contract may be brought in the district court against the state the same as against a private person" was held in North Dakota not to be sufficient statutory authority for bringing suit against the Workmen's Compensation Bureau of that state. The funds of that bureau were separately provided for; a suit in a negligence case against the bureau was a suit against the state; no consent had been given to such suit by the above statute; and neither had consent to suit been given by the provision for appeal to the courts from the awards of the bureau. The funds of the bureau were to be used for compensating injuries to workmen, not for compensating persons suffering because of mistakes

[102] State v. Harris, 22 S.W. (2d) 1050 (Mo., 1929).
[103] Fowler v. State, 22 S.W. (2d) 935 (Tex., 1930).

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of the bureau.[104] So, also, a California statute providing for suits against the state on contract or negligence claims does not permit suit against the state under a Torrens act, a separate fund being provided for the payment of claims arising from mistakes in title under that statute. Claims presented under this act must be brought in the manner provided for by that act, not in accordance with the general claims act.[105]

[104] Watland v. N. Dak. Workman's Comp. Bureau, 225 N.W. 812 (N.D., 1929).
[105] Gill v. Johnson, 284 Pac. 510 (Cal. D.C. App. 4th., 1930).

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NOTES ON MUNICIPAL AFFAIRS

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The past year has been municipally more eventful than many of its recent predecessors. Our greatest city has passed through the throes of a more than ordinarily colorful municipal election. Our second city has been reduced to most distressing financial straits. Our fourth city is now on the verge of recalling a mayor elected less than twelve months ago. The Greater Pittsburgh plan, which would have made that city first in area and fifth in population, was checked by its failure to secure a two-thirds majority in a majority of the 122 constituent municipalities. St. Louisians are presenting the people of Missouri a constitutional amendment to permit an almost equally gigantic combination of city and county areas. James M. Curley, the Bay State's most potential politician, elected for the third non-consecutive four-year term as mayor of Boston, has vigorously voiced the demand for a Greater Boston and organized a movement to bring it to pass. Cincinnati has succeeded in conducting its third P. R. election, and—what is more important—in retaining an anti-machine majority in the council, capping the climax by naming a college professor (C. A. Dykstra) as city manager. Cleveland has retained its charter, changed managers, and since the dust created by its vice and virtue spasms has cleared away seems to have the best government it has enjoyed in recent years.

The city manager plan has continued to spread. Seventeen cities in the United States, one in Canada (Calgary), and one in Ireland (Cork), adopted the scheme in the calendar year 1929. The largest city in the United States to adopt the plan was Flint, whose charter unfortunately is subject to severe criticism in certain respects. Two small cities abandoned the plan during the same period. The total number of manager cities is now 411.

The Indiana supreme court held unconstitutional the act authorizing cities of that state to adopt the manager plan, on the extraordinary ground that the five days allowed the city clerk to check petitions was obviously insufficient in Indianapolis and that, since the act could

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not be operative in that city, it was not of uniform application and consequently void in toto. If the reasoning in this case were adopted by other courts, practically all petition procedures for the nomination of candidates or initiation of measures would be unconstitutional. The verification of the petition was declared to be a judicial act, the performance of which could not be transferred to a deputy. On such a basis, twenty-five or fifty days would be too little for the examination of the petitions necessary in large states and cities. Indianapolis was thus deprived of benefits of the plan adopted by an overwhelming majority the previous year, and Michigan City, which has had a manager for years, had to revert to the form of government provided by the general law of Indiana. The Indiana manager law was amended by the 1929 legislature to meet the objections of the court, but without avail as far as these two cities are concerned. The Kentucky optional manager act was also declared unconstitutional, on the ground of technical defects in the form of the act validating its passage. T. H. R.

The New York City Election of 1929. In the 1929 mayoral election, the Republican party contrived to bring upon itself the worst defeat in its history. The general setting was not one to encourage much hope of overthrowing the winsome Walker. The campaign began with the speculative tide at full flood and everyone satisfied. It ended amid the bewilderment and distraction that followed the collapse.

The Tammany strength in the city is to be found among the racial groups of more recent arrival. The most important of these are the Irish, the Jews, and the Italians, in this order of power and influence. The Republicans have drawn their strength from the older American stock which the city recruits in substantial numbers from all over the Union. These people, however, have a higher standard of living than the more recent immigrants and a lower birth rate. They have also a greater tendency to drift to the suburbs beyond the city limits until they have acquired such fortunes as permit them to return to Park Avenue. The Republican party has usually been stronger in purse than in numbers. In local elections it has been content to nominate a respectable business man, frequently a stranger to everyday politics, who puts up a mildly vigorous campaign, ending in a decisive but not ignominious defeat. Besides this, the party has main-

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tained, supported largely by federal patronage, remnants of organization in every district in the city. Until recently, state patronage was, if not completely in the control of the Republican party, at least frequently at its disposal.

Since 1916 the city has labored under the direct primary system, which the reformers succeeded in getting from a reluctant legislature. Even from the first, however, the primary system gave signs of betraying the hopes of the reformers. In 1917, Mayor Mitchell, seeking renomination on the Republican ticket, was defeated by a small margin by a party hack from Brooklyn, who ultimately finished a poor fourth in a four-cornered race. In anticipation of the approaching 1929 election, Representative Fiorello H. LaGuardia busied himself among district clubs of his party building up a sufficient following to menace any conventional candidate. Though the party leaders foresaw the disaffection his selection would produce and the difficulty they would have in raising money for his campaign, they could offer no assurance to prospective candidates of a safe passage through the primary. Such candidates were offered the prospect of an expensive primary campaign, with little prospect of success, when even a victory in the primary would have meant a nomination of doubtful value. Under these circumstances, it is not surprising that the party leaders failed to secure candidates to accept their nomination at the unofficial party convention and were forced to accept the self-chosen LaGuardia. It would be a mistake, however, to suppose that the leaders did not appreciate the folly of the LaGuardia candidacy.

The campaign that followed aroused more than ordinary interest. The central figure proved to be the fluent and affable Socialist candidate, Norman Thomas. He discussed public issues in such a penetrating and forthright manner as to win wide support among persons not ordinarily given to voting the Socialist ticket. Several of the metropolitan dailies openly endorsed him, and all were generous in praise of his campaign. The Republican leaders found it impossible to hold their conservative following for the noisy little Italian. Large numbers of Republicans deserted to Walker, while independent Republicans and Democrats alike voted for Thomas. The latter received four times the normal Socialist vote. He received some 20,000 Italian votes which his ticket failed to receive, and perhaps brought an equal number of Italian votes for the entire ticket. LaGuardia ran far-

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behind his party colleagues. The Walker plurality fell just short of one-half million votes.

Possibly the chief significance of the election was the utter rout of the Republican party in the four outlying boroughs of the city. In these they elected not a single candidate to the Assembly or the Board of Aldermen. Their sole survivor was Borough-President George U. Harvey, running against the still demoralized Democratic machine of Queens. In the present Board of Aldermen the Republicans have but four of the sixty-five seats. Their representatives are Joseph Clark Baldwin III, banker from the silk stocking district, Frank Manzella from Uptown's Little Italy, and two Negroes, James E. Hawkins and Fred R. Moore, from Harlem. Since the election, the city Republicans have been busy trying to effect a reorganization that will enable them to make a better showing in the 1930 campaign for the governorship. To date, these efforts appear to have borne little fruit.

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Metropolitan Government. The most interesting and significant happening in this connection during the past year has been the United States census. The results have so far appeared only in fragmentary form, but they are sufficient to show that the so-called suburban trend has been going on with extraordinary rapidity. Close students of the subject have been aware of this tendency, but it has taken the shock of the official figures to awaken the general public to what is taking place. Manhattan Island has lost 475,000 people in ten years. Boston, Cleveland, and St. Louis have grown so slowly as seriously to disappoint their patriotic citizens. On the other hand, the suburban communities adjacent to these large cities have grown with amazing rapidity. This has created no mere statistical situation. The people who have been moving into the suburbs are real flesh and blood people with the same need of policemen, sewers, and street cars as other human beings. They have disregarded political movements in their outward trek and have created problems equally regardless of the traditional units of government. Even in the neighborhood of comparatively small places, similar situations have developed. The two notes which follow deal with characteristic examples of the metropolitan problem. T. H. R.

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The Proposed Merger of St. Louis City and County. St. Louis was originally a part of St. Louis county. The Missouri constitution of 1875 authorized its separation if approved by a majority of the votes cast in the entire county. Favorable action was taken at an election in 1876, though a majority of the voters in the rural districts were opposed to the separation.

Changed conditions, due chiefly to improved transportation facilities, led to a reversal in sentiment in both sections. The city, unable to extend its boundaries, faced unfavorable comparison with other large cities in statistics of population. More important, though perhaps less influential upon public sentiment, were questions of health, crime, transportation, and public welfare growing out of the development of urban conditions in county communities adjacent to the city, some of which possessed no municipal government.

After years of agitation and effort, an amendment to the constitution, adopted in 1924, authorized the creation of a board of freeholders, consisting of nine members each from the city and the county, to draft one of three alternative plans to be adopted at separate elections by a majority vote each in city and county. This board, organized in June, 1925, was deadlocked for nearly a year through equal division of city and county members. At the last moment, one county member voted for the city plan in order that some proposal could be submitted to the voters.

The election was held on October 26, 1926. The plan submitted provided for consolidation of the entire area of city and county as a single municipality. Many in the city were skeptical regarding the scheme, and there was considerable apathy among voters. With only one-third of the normal vote, the plan carried in the city by eight to one. The opponents in the county were well organized and active. An unusually large vote was cast, and the scheme was rejected by eight to one. The opponents in the county were well organized and active. An unusually large vote was cast, and the scheme was rejected by more than two to one. The campaign developed considerable animosity, but it was recognized in county as well as city that some change was necessary. Informal conferences were held, and the chambers of commerce of the city and county agreed, early in 1929, each to appoint thirteen members of a joint metropolitan development committee to consider the problem. This committee decided that a comprehensive

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survey of the entire area should be undertaken, and Professor Thomas H. Reed was secured as director.

Work was begun in the summer, and Professor Reed gave his entire time to the project during the fall and early winter. A city and county council on metropolitan government, of 400 members, was appointed to study the material collected and to make recommendations. The council was divided into thirteen committees, each dealing with a general problem.

It soon developed that the federal, or borough, plan, of which Professor Reed is an exponent, was favored by the metropolitan committee and the council. Some of the special committees came to early agreement upon leaving practically intact the organization of existing municipalities, school districts, and courts, subject to the power of the legislature to change them in the future. There was similar agreement upon the creation of a separate municipal government for the unincorporated rural territory, and for the organization of a government for the Greater City, with important powers relating to health, sewers, highways, public welfare, public utilities, libraries, parks, recreation, city planning, and elections. Provision was made whereby one municipality might be annexed to another with the consent of the voters of each. Parts of the new rural municipality might be annexed to an urban municipality with the consent of the voters of each municipality and of those of the part annexed. Taxation, special assessments, condemnation procedure, and financial administration required longer consideration, but all of the committees submitted practically unanimous reports by the spring of 1930.

In May, the council and the metropolitan development committee agreed upon the general plan, and this was endorsed by the chambers of commerce of the city and the county. The plan involved the adoption of an amendment to the constitution which would authorize the drafting of a charter for the city of Greater St. Louis, to go into effect when adopted at separate elections by a majority vote each in city and county. Initiative petitions are now (June) being circulated, and it is anticipated that the requisite number of signatures will be obtained before the final date for filing with the secretary of state on July 3. The amendment will then be voted upon at the regular election in November of this year.

The proposed amendment includes about 3,000 words and regu-

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lates with considerable detail the provisions that must, and those that may, be included in the charter that it authorizes. The amendment does not regulate the manner in which the charter shall be drafted, but provides that its text may be submitted by initiative petitions signed by voters of the city and county equal in each case to eight per cent of the total votes cast for supreme judge at the last election in each area.

While many of the provisions of the amendment are permissive, and some are broader than provided in the plan, it is definitely understood that the charter to be submitted will be that which has been agreed upon by the city and county metropolitan development committee. If the amendment is adopted, it is probable that the charter of the city of Greater St. Louis will be submitted to the voters in city and in county early in 1931.

Criticisms of the plan, both in city and in county, thus far have been few, and unless something unforeseen develops, it is probable that the amendment will be ratified in November. While it appears that the charter, if submitted, will be approved by the city, it is too early to hazard any prediction regarding the attitude of voters of the county.

The absence of acrimony in the conferences between representatives of city and county and the unanimity that has characterized the various agreements are in large measure due to the unfailing tact, patience, and fairness manifested by Professor Reed in guiding the work of the different committees.

ISIDOR LOEB.

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Hartford Adopts a Metropolitan Charter. At the regular biennial election of November 5, 1929, the people of Hartford approved by a large majority the metropolitan district plan enacted by the 1929 General Assembly of Connecticut, and thus brought into existence a brand-new governmental unit in that state. For two reasons, this development deserves comment. In the first place, Connecticut has long been preëminent as a state of towns, a "republic of republics," as its editors and local publicists like to call it. The people of the state have historically shown an almost ineradicable tendency to atomize their political life, to break up the territory into smaller and smaller units, and to fight off anything smacking of centralization.

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The adoption of a metropolitan charter for Hartford and the surrounding small towns, though the political identity of the separate towns is preserved and most of their internal functions left undisturbed, is certainly a step in the direction of consolidation, and in that sense, a reversal of the course followed in the past. In the second place, the example of the Hartford district will undoubtedly be followed in other highly urbanized portions of the state, particularly in New Haven and Fairfield counties, where the towns about such cities as New Haven and Bridgeport constitute urban units across which the ancient town lines cut irrationally. Since the charter for the metropolitan district of Hartford county will probably be followed by the creation of other districts with similar problems, its provisions are of more than current interest to students of metropolitan government.

The machinery for drafting the charter of the district was set in motion by the creation of a "commission to investigate the advisability of establishing a metropolitan district within the territorial limits of the county of Hartford" by special act of the 1927 General Assembly.[1] The personnel of the commission included the senators and representatives of the towns of Hartford, East Hartford, West Hartford, Bloomfield, Windsor, Newington, and Wethersfield, plus three voters from each town in the proposed district.[2]

After nearly two years of work, the commission, early in 1929, presented the draft of a charter which passed the General Assembly and received the governor's approval on May 13, 1929.[3] Generous support was given the new plan by the leading newspapers of Hartford and by various civic organizations, and, contrary to the expectation of many observers, little opposition was aroused in any of the towns involved except West Hartford.[4] According to the terms of the charter, it was to go into effect only if approved by Hartford and at least one other town. At the regular town elections held October 7,

[1] Special Act No. 346, 1927.

[2] The East Hartford representatives withdrew from the commission, and that town took no part in the formation of the district.

[3] Special Act No. 511, 1929.

[4] This town, next to Hartford itself, is the largest and wealthiest of any in the proposed district, being a choice residential suburb of the metropolis. The residents of the town seem to have feared that the proposed plan would lead to eventual annexation, and had a not unnatural desire to prevent their affairs from falling into the hands of Hartford politicians.

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all of the towns, with the exception of West Hartford, approved the plan by large majorities.

The new district has an area of approximately one hundred square miles, a population of about 190,000, and an assessed valuation of not far from $400,000,000. While the small towns still contain much agricultural land, their interests are predominantly urban and their destiny is closely connected with that of Hartford. For some years they have had several serious problems in common, and the new charter provides machinery for solving these problems.

The new district is given powers and duties with respect to the following functions: First, the laying out, construction, maintenance, and improvement of public highways, streets, walks, and bridges, street lighting and sprinkling, the removal of snow and ice, and the establishment of building and street lines in the case of all streets which enter more than one of the towns, or which form a boundary or part of a boundary between two or more such towns, or such streets and highways, existing or proposed, which are voluntarily turned over to the metropolitan district by the authorities of the separate towns. Second, the laying out, building, and maintenance of sewers and sewage disposal plants and the collection and disposal of garbage and refuse. Third, the creation and maintenance of a water system, including both the impounding of water and its transmission and sale. Fourth, in connection with any of the foregoing functions, the district is to have exclusive charge of regional planning, and, so far as may be necessary for carrying out any of the foregoing functions, it is to have the right to lay and collect taxes and borrow money, and the power to take property by right of eminent domain, and to assess benefits and damages in the layout of any public improvement.

These provisions indicate briefly the nature of the problems confronting the people of the district. For many years, the sewage of the several towns has passed through the sewerage system of Hartford and has placed upon that system an increasing burden which it was felt should be transferred to an authority with power to act for the district as a whole. As to water supply, a similar situation existed. The supplies of the smaller towns were furnished under contract by the Hartford department, yet Hartford was in no position to regulate the entire problem. The transfer of powers over highways and the provision for regional planning are made necessary by the traffic problem of the district. Much of the motor vehicle traffic be-

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tween the seaboard and northern New England passes through Hartford and the surrounding towns, and grave problems have been created, especially within Hartford itself. The legal difficulties in the way of regulation seemed insuperable without the creation of a special authority acting for the whole district.

The charter shows admirable thoroughness in its provisions for the machinery for assuming and carrying out the transferred functions. The affairs of the district are to be in the hands of a board of twenty members. One group of five members is to be chosen one for each town. The other fifteen are to be named for the district at large, due regard being paid to the representation of all parts of the district and to the claims of the leading political parties. The first board is to be appointed by the governor of the state, the five members at large to serve for two years; of the other fifteen, five are to retire in two years, five in four years, and five in six years. Not later than two years after the original appointments, the voters of the district are to choose biennially five members to serve for six-year terms. The members of the board will be unpaid. Its deliberations will be presided over by a chairman, but the executive secretary is to be the executive officer of the board. The chairman of the board and all sub-committees, bureaus, boards, and commissions are to hold office for one year only. However, the treasurer, the managers of the water bureau and the bureau of public works, and such other functionaries as are specially designated, are to hold office during good behavior and to be removed only for cause.

The public works functions of the district will be performed under the direct supervision of a manager of the bureau of public works, who is to be responsible to a public works committee of the district board. The personnel of his department, so far as possible, is to be made up from the existing personnel of the towns of the district. Similar arrangements are made with regard to water supply, the chief engineer of the Hartford water department being appointed manager of the water bureau of the district.

Regional planning in the district will be under the control of a commission on regional planning consisting of the managers of the bureaus of public works and water, two members of the district board, and two electors of the district, appointed by the board for two years. The commission is to have general supervision over the planning and location of streets, bridges, public buildings, etc. Moreover, it is pro-

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vided that "no map or plan of any land within the district showing proposed or projected streets shall be recorded in the office of any clerk of any town in the district unless it bears the endorsement of the committee on regional planning."[5]

In pursuance of its regional planning powers, the district is empowered, after carrying out public improvements, "to convey any real estate thus acquired and not necessary for such improvements, with or without reservations concerning the future use and occupation of such real estate so as to protect such public works and improvements and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works."[6]

The budget-making authority of the district is a board of finance consisting of the treasurer of the district, two members of the board, and four voters of the district. The last-named members serve for two years and may not be removed by the board. No change in the budget may be made after its determination by the board of finance, except by a two-thirds vote of the entire district board. The board is granted the usual powers of taxation and borrowing, subject to the same restrictions laid upon other Connecticut municipalities. Revenue will be raised by a tax upon the towns laid in the same way as the present state and county taxes on towns.[7]

The borrowing power is conferred, subject to the requirement that the total debt of the district shall not exceed five per cent of the assessed value, with the usual allowance for deductions of debt for revenue-producing purposes. All bonds issued must be in serial form, the first instalment to mature within two years of the date of issue, and the last within not more than forty years.[8]

To one interested in local government under conditions as they exist in Connecticut, the most significant feature of the act is the way in which it attempts to preserve the political identity of the various

[5] Section 29.

[6] Section 28.

[7] The so-called state tax on towns is laid as follows: the General Assembly determines upon the amount to be raised for state purposes. (It is now $1,250,000, ch. 294, Public Acts, 1929.) The average of the taxes laid locally for the past three years is then computed. Each town then pays to the state a tax equal to the proportion which local revenues bear to the collections of all the towns in the state. Section 224, Gen. Stat. Rev. of 1918. The counties raise their revenue in the same way.

[8] Serial bonds only are permitted in the political sub-divisions of the state.

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towns incorporated into the district. There is a great deal of "town sense" still remaining in such Connecticut communities, a great deal of honest sentiment clustering about village greens and town halls. This sentiment is respected both in the provisions having to do with the make-up of the district board and in the requirement of local consent and coöperation for carrying out the transferred functions. Such requirements give us interesting glimpses of that persistent localism, long characteristic of the New England town, and, as yet, by no means dead. One wonders, however, how long such a feeling can make headway against the facts of modern urban life. Ease of transportation and the generally greater mobility of population have deprived the lively feeling for the town as a corporate entity of its strongest bulwark—a settled, stable, and homogeneous citizenry. Under modern conditions, some of the incorporated towns are little more than living quarters for a commuting population which finds its amusement as well as its subsistence in the central city. The smaller towns are thus growing rapidly, and their new inhabitants, drawn from widely separated sources, are likely to become impatient with the leisurely doings of town meetings and rustic selectmen and to demand services from the organization best equipped to render them. The old order will not pass without a struggle, but it seems likely that the functions transferred to the new board will be added to in the future.

The idea of metropolitan government has already been taken up elsewhere in the state. By a special act of the last General Assembly, a commission similar in composition to that which drafted the Hartford county charter was provided to investigate the advisability of a similar arrangement for New Haven and several surrounding towns.[9] The proposed district would include New Haven, North Haven, West Haven, East Haven, Orange, Hamden, and Woodbridge. These communities cover an area of one hundred and thirty-eight square miles and contain a population of well over 200,000 and taxable property of nearly half a billion dollars. The commission now studying the problem will report a charter at the 1931 session of the General Assembly.

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[9] Special Act No. 472, 1929.

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An Analysis of Cincinnati's Proportional Representation Elections. Like most large American cities, Cincinnati for years suffered politically under the dominance of a group which appealed to allegiance to a national party to keep it in control. Here it happened to be the Republican party. In 1923 a revolt was started by Murray Seasongood.[1] The next year the City Charter Committee, a group of independent citizens, was organized under the chairmanship of Henry Bentley, to submit to the voters a charter for a new form of government. This charter provided for a council of nine members elected at large by the Hare system of proportional representation, they in turn to choose a city manager, mayor, and vice-mayor, the latter two officers from among their number.

The new charter was adopted in 1924, over the opposition of the Republican organization. The Charter Committee continued its organization with a view to persuading nine suitable candidates to run for council and later promoting their election. It adopted the ward and precinct organization plan of the major political parties, with this important exception: all its workers were volunteers without promise or hope of reward by way of "jobs" or favors for their efforts. So far, it has succeeded in carrying three elections, and the administration of its successful candidates has brought the city government to the point where many municipal experts point to Cincinnati as "the best governed city in the United States."

An important factor contributing to the results achieved has been election by proportional representation. Under this system the voter marks the candidates 1, 2, 3, etc., in the order of his choice. He may vote as many choices as he desires. His ballot counts initially for his first choice only. If the candidate to whom he gives his first choice has more first choice ballots than are necessary for election,[2] the surplus ballots are transferred to the second choices marked on the excess ballots, taken in order, and his ballot may count for another choice. After all the surplus ballots are transferred, the lowest candidates are eliminated in order, and their ballots transferred to the first following choice on each ballot, unless that candidate is already elected or eliminated, in which case the ballot goes to the next choice

[1] He became mayor on January 1, 1926, under the new form of government dealt with in this article.

[2] The "quota" for election is the first whole number above one-tenth of the entire number of valid ballots cast.

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marked theron still in the race. This goes on until either nine candidates have their quota of ballots or only nine remain. In any case, the nine are elected. As the present article will attempt to demonstrate, this system not only gives better expression to the voters' will, but also yields a clearer picture of the voters' mind than does the ordinary plurality election.

Since the adoption of the new city charter in 1924, three municipal elections have been held, in November, 1925, 1927, and 1929. In each of these the City Charter Committee, organized on a non-partisan basis, endorsed nine candidates for council, three of whom were given preference in support by the regular Democratic organization, and six of whom were independent Republicans. In the first election, the regular Republican organization endorsed six candidates. In the second election, it endorsed seven of its own candidates and two of the candidates who had already been endorsed by the City Charter Committee. In the last election it endorsed a full ticket of nine candidates. In each of these elections there were several candidates who were not endorsed by either the City Charter Committee or the Republican organization, two of them negroes.

An analysis of the vote for councilmen and the transfers of ballots at these elections is of interest to the student of political affairs. In the first place, the vote shows that the majority of the electors in the city of Cincinnati will vote in municipal elections independently of either of the major political parties when the proper candidates are available. In the 1925 election, the candidates endorsed by the City Charter Committee received over 76,000 first choice votes; those endorsed by the Republican organization, about 33,000 first choice votes; and the other twenty-four candidates, about 10,000 first choice votes. Of the 76,000 votes received by the Charter Committee candidates, about 30,000 went to the three who had the preferential endorsement of the Democratic party. In other words, the regular Republicans had 33,000 votes; the Charter Democrats, 30,000 votes; and the independent charter candidates and other independents, about 56,000 votes. In the 1927 election, the City Charter Committee candidates polled 72,000 votes; the regular Republican candidates, 35,500; and the outside independents, over 16,500. Of the Charter Committee candidates, those who had the preferential backing of the Democratic party polled 28,500 votes. The independent charter candidates

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and outside independent candidates therefore polled altogether approximately 60,000 votes.

This showing of a substantial plurality of independent votes in the first two elections under the new charter, almost equal to the combined votes of the candidates endorsed by the Republican and Democratic parties, showed conclusively that the independent voters of both parties and of no party are in control of the municipal affairs of Cincinnati, once they are given the power to express their preferences at a general election. The history of the same period proved, however, that the independent voters of neither party were strong enough to carry the county primary elections in August of the even-numbered years. The proportional representation election combines the benefits of the primary and the general election at a time when all the voters have a chance to express themselves.

In the 1929 election, the candidates endorsed by the City Charter Committee received about 79,000 first choice votes; those endorsed by the Republican organization, about 51,000 votes; and the other six candidates about 9,000 votes, 8,000 of which went to the two negro candidates. Of the 79,000 votes received by the Charter Committee candidates, about 30,500 went to the three Democrats, 48,500 to the independent Republicans. Adding to the last figure the 9,000 votes cast for outside candidates would appear still to give the independent voters a decided plurality. But this does not present a correct picture, since the majority of the 8,000 negro votes were cast as a protest against the Republicans' refusal to place a negro on the ticket and were likely to go to either group that endorsed a negro for the council. The Republican organization, therefore, appears to have obtained a slight plurality at the last election,[3] although each major group is represented in the present council by three members. The reasons for the increased Republican strength are manifold: endorsement of a full ticket of nine candidates, most of whom had previously been in public office and were well known; better internal organization; increased prestige, due to election of Cincinnati men as state governor and attorney-general; play to all local groups having petty discontents with city government; the fact that the three most popular Charter councilmen refused to stand for reëlection; etc.

[3] This appearance may be discounted, however, because many persons voted for the Democrats endorsed by the Charter Committee who would not have voted for a Democrat on a party ticket.

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In the second place, proportional representation, with nomination by petition and election at large on a non-partisan ballot, where the independent citizens have their own organization to back their candidates, offers the best inducement to bring strong candidates into the field and gives the independent voter the best chance of exercising his intelligence. A voter can vote an entire ticket without hurting his first choice. He can vote a first choice on principle, though he knows the candidate has no chance of election, and still have his ballot help to elect a more popular candidate who, he thinks, will make a good councilman, by giving him his second or later choice vote. There is no danger that a small block of voters will swing the election against a majority, as there is in a straight election even without party emblems. The types of candidates and the results of the last three municipal elections in Cincinnati prove these points.[4]

The proportional representation feature of the election worked out perfectly in all three years. In the 1925 election, after first choice votes were counted, the Charter group had enough votes to elect six candidates, and possibly a seventh, depending on the transfers from the twenty-five outside candidates. The Republicans had almost enough to elect three, but needed transfers to make sure. The twenty-five outside candidates, taken together, did not have enough votes to make up the quota for one councilman. After all the outside candidates had been eliminated, the Republican candidates had barely enough to elect three, provided they should not lose more votes than they gained on transfers. Their third candidate, Lackman, was elected over Gamble (Charter Committee) by 77 votes, though it would have been possible for him to have been defeated by both Luchsinger (Charter Committee) and Gamble on a different arrangement of votes among the Charter candidates.

In the 1927 election, after first-choice votes were counted, the Charter group did not have quite enough votes to elect six candidates, but had to depend on transfers from outside candidates to give them this strength. The Republicans had almost enough to elect three, and the outside independents had, together, enough to elect one. The

[4] For instance, the outstanding independent of the Charter group, though during his first term subjected to repeated and virulent attacks by some newspapers and influential citizens, increased his first-choice vote from 20,543 in 1925 to 24,121 in 1927, the largest vote received by any candidate in any of the last three elections.

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Charter Committee candidates gained more on transfers than did the regular Republicans, and thereby elected six candidates, the Republicans two, and the outside independents one. At each of the first two elections, the Democratic candidates on the Charter Committee ticket had more than enough first-choice votes to elect two candidates, but not enough to elect three; and two of these candidates were elected each time.

In the 1929 election, after first-choice votes were counted, the Charter group had enough such votes to elect five candidates and a surplus of 9,408. The Republicans had enough to elect three, and a surplus of 9,292. The outside independents had barely over 9,000 votes, not enough to elect one candidate. Therefore, if the Charter candidates could maintain their lead, they would elect six councilmen. This is exactly what happened. After the elimination of the eleventh candidate, two of the Charter candidates were still a total of 1,000 votes short of their quotas, and the lowest Charter candidate still in the race led his Republican opponent by about 1,200 votes. Thus the total Charter Committee candidates' net gain on transfers was approximately 100 votes, which insured the election of the sixth Charter candidate. The Democrats on the Charter ticket, however, elected all three of their candidates, more than their quota justified, due to a fortuitous grouping of first-choice votes. The necessary transfers to insure their final election, however, came from other Charter candidates who were not Democrats, due to the fact that they were all on the same ticket.

It is interesting to note that endorsement by both of the organized groups does not necessarily aid a candidate in a proportional representation election. In a plurality election, a candidate who was endorsed by both the regular Republicans and the Charter Committee would be practically certain of election. Two candidates in 1927 had such endorsement. One of them was the fifth elected, and the other, after trailing during most of the count, came ahead at the end and was the ninth candidate elected, though his election was in doubt until the final transfers were completed. The reason for this is that it is necessary to have enough first-choice votes to keep the candidate in the running until he can benefit from his lower-choice votes. A candidate who is endorsed by both of two hostile groups is not likely to get as many first-choice votes as he otherwise would, because each side

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mistrusts his relationship to the other and there is a general feeling that, being on both tickets, he is bound to be elected anyway and a voter would better give his first-choice vote to another candidate.

The regular Republican organization has been experimenting, but has apparently not yet found a way to "beat the system." In the first election it thought that it would gain strength by concentrating on only six candidates. But it found that this was a source of weakness, because it had fewer candidates than it might have had to rally its friends to the tickets and so pass on additional votes to its leading candidates when they were eliminated. It also attempted to district the city by wards, by dictating to its voters in each ward, not only for what group of candidates they should vote, but in what order they should vote them. In this it failed signally in several wards, because the voters would not accept the dictated first-choice candidate. It also tried to pair candidates, with the result that only one of each pair was elected, and not the strongest candidate. In the 1927 election it endorsed nine candidates, but two of them were also Charter Committee candidates. Three of the others had been backers of the Charter Committee in the 1925 election. Apparently 1925 Charter Committee and 1927 Republican did not mix, for these three candidates together had only 4,300 first-choice votes to over 31,000 for the other four regular Republican candidates. In 1929 the Republican organization endorsed a full ticket of nine of its own men,[5] but tried to district the city by precincts. This was more successful than the previously attempted districting by wards, but caused dissatisfaction among the candidates themselves and may have been responsible for the failure to elect more than three councilmen. The plan handicaps the stronger candidate in favor of the weaker.

In each of the elections a regular Republican candidate led the field in only eight wards, though in the last previous election of councilmen by wards the Republican organization had carried twenty-five out of the twenty-six wards.

Lest it be said that all this applies equally to nomination by petition and non-partisan election at large, let us see the peculiar value of proportional representation as evidenced by these last three city elections. While the same candidates would probably have run on a

[5] One was the so-called unaffiliated independent elected in 1927, but who after election went over to the Republican group.

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non-partisan ticket, the make-up of the council would have been different. Without proportional representation, the Charter Committee would probably have elected all nine, or at least eight, of its candidates. In that case, there would have been little or no minority representation until the Charter candidates split among themselves. But suppose the time comes when the Charter Committee group is no longer in the majority; then it will be of incalculable benefit to assure the election of representative independent citizens to the council to constitute a fighting minority. As a matter of fact, very few of the divisions in the council have been along strictly party lines.

Cincinnati has had for the past four years a truly representative council. Representation is no longer by geographical units, but by groups having like interests. The council received the votes of over ninety per cent of the persons voting instead of the usual fifty to sixty per cent. Labor had a representative in the first council under proportional representation. The business element is represented. The independent voters of the city have their representatives, and the politicians of both parties have representatives. It is in most cases the best from all of these groups that are chosen as a result of proportional representation.

It is interesting to note that no Charter councilman who ran for reëlection has been defeated. Usually their individual vote has been greater each year. One Charter candidate who was defeated in 1927 was elected in 1929. The Republicans have never permitted a defeated candidate to run again, but one of their former councilmen has been defeated in each election. This is because of their attempts to control the election system in a way that does not result in the election of their best men.

Another interesting political phenomenon is that, though the women have been among the most enthusiastic Charter supporters and workers, a woman has not been elected to the council under the new system of voting. The Charter group had a woman on its ticket in 1925, but she was badly defeated. Since then no woman has been a candidate.

The organized labor element has not consistently supported its supposed representatives. The Charter group and Republicans have each endorsed a "labor candidate" at each election. In 1925, the Charter labor representative was elected. He did not run for reëlection, and

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no labor candidate has been elected since. When the Republican labor candidate was eliminated in 1925, only about eleven per cent of his vote went to the Charter labor candidate. When the Charter labor candidate was eliminated in 1927, less then twenty-two per cent of his vote went to the Republican representative of organized labor. In 1929, the similar transfer was only about five per cent.

No one who saw Cincinnati five years ago and today will deny the benefit of the new government. Even the leading spokesman for the opposition has recently admitted publicly the fine public spirit shown by the independent Republicans of the Charter group. Giving all due credit to the city manager plan, and to a most fortunate original choice of city manager, if the city is to keep the gains that it has made it is essential that it retain the proportional representation method of voting. The politicians know this, and are only waiting for the people to become less interested in order to attempt to bring about a change in the method of voting. It is, therefore, essential that the arguments against proportional representation be studied, in order to see whether they are borne out by the facts.

The arguments that were made against the system in the 1924 campaign were four: (1) it disfranchises voters; (2) it accentuates racial and religious animosity; (3) it destroys party responsibility; and (4) it creates *bloc* government.

Does proportional representation disfranchise anyone? In the 1925 election, after an intensive educational campaign on proportional representation voting, less than three and one-half per cent of the voters who went to the polls were unable to mark their ballots correctly. In the 1927 election, which was not preceded by such an intensive campaign of education, about five and four-tenths per cent of the ballots were blank or marked incorrectly. Last year, the invalid ballots represented only four and six-tenths per cent of those cast. These are extremely small proportions of invalid ballots. There were about 5,000 more valid votes cast in 1927 than in 1925, despite the larger proportion of invalid ones, and the 1929 vote exceeded that of 1927 by over 14,000, and was the largest ever cast in a city election in Cincinnati. This shows that the electorate is taking a larger interest in the city elections.

Whether or not proportional representation has encouraged voting, it has encouraged a complete expression of the voter's will. About

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ninety per cent of the people who voted first choice for candidates not endorsed by either the Charter Committee or the Republicans in 1925 had their ballots marked for some candidates so endorsed as a later choice. If we eliminate the votes for the two negro candidates, the percentage of transferable ballots was ninety-two and one-half. Some persons were so anxious to have a complete expression that they numbered all thirty-nine candidates; while one careful voter began at the top with number one and marked each candidate in order, placing number forty in the blank space at the bottom of the ballot.

Nobody who can read and write is disfranchised. The success of democracy depends on an intelligent electorate. We need have no fear if we disfranchise only those so ignorant that they cannot vote without birds.[6]

The evidence of the last three municipal elections does not support the contention that proportional representation accentuates racial and religious animosity. The writer knows of no candidates who represented racial groups in any one of the elections. The transfers show votes cast for principles or political groups, rather than on religious lines. In the 1925 election, when the leading candidate elected, a Democrat endorsed by the Charter Committee, was a Catholic, about sixty per cent of his transferable ballots went to non-Catholic candidates. Of the votes transferred to Catholic candidates, about three-fourths, or thirty per cent of his total vote, went to a fellow Democrat endorsed by the Charter Committee. This vote was primarily Charter-Democratic, for on the latter's elimination, a non-Catholic Democrat endorsed by the Charter Committee was the main beneficiary of his transferred ballots. Barely over eight per cent of the leading Charter-Democratic candidate's transferable ballots went to the Catholic Republican candidate who was elected in 1925. In 1927, this same candidate received less than nine per cent of the former's transferable ballots. Barely two per cent of the leading Jewish candidate's transferable ballots went to other Jewish candidates in 1925 and 1927.

As no Catholic candidate endorsed by the Charter or Republican groups had a surplus, or was eliminated until the election was over, it is impossible to make any deductions from transfers in the 1929 election. The candidate on the Republican ticket who was a Jew

[6] The Republican and Democratic emblems on the old partisan ballots in Cincinnati were the eagle and the rooster.

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was the second to last one eliminated. Less than fourteen per cent of his ballots went to the Charter candidate who was a Jew, while about seventy-one and one-half per cent went to four other non-Jewish Republican candidates.

An analysis of the precinct vote in the last election shows that social considerations, among which are included religious affiliations, played a larger part than previously in voting for the individual candidates. This was probably due to the fact that the candidates on the Charter side were not as well known publicly and the political issues not as clear cut[7] as in the two previous municipal elections.

The negro voters showed more solidarity as far as transfers are concerned, but they did not support candidates of their own race in sufficient numbers to see them cut any figure in the first two P.R. elections. In 1925, there were two leading negro candidates, one of whom received about 1,100 votes and the other about 1,200. When the lower one was dropped, about half of his vote was transferred to the other negro candidate. In 1927, one of the negro candidates received 3,409 first-choice votes and another 269. The latter received 89 votes by transfer before he was eliminated. On his elimination, 137 of his 358 ballots went to his fellow-negro candidate. In 1929, the negroes made a particularly strong campaign for their two candidates. They received a total of about 8,000 first-choice votes, almost 6,000 less than the quota necessary for the election of one councilman. One of their candidates was high on first-choice votes in three out of twenty-six wards and tied for first in another. In one precinct, the two negroes received 223 first-choice votes out of 242 ballots cast, and in another 215 out of 256. These are remarkably high percentages and show an unusual solidarity. Yet the candidates received hardly fifty per cent of the estimated negro vote throughout the city. On transfer, the remaining negro received almost seventy-two per cent of the vote of the one first eliminated. On the former's elimination, about fifty-five per cent of his ballots became ineffective for failure to vote for other candidates. These votes, if they had all gone to the Republican candidates, would have elected one more of their number. But if they had been divided among all the remaining candidates in the same proportions as the transferred votes were divided,

[7] The Republican candidates declared that they favored the manager plan of government and the retention of the existing city manager.

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they would not have affected the final result. Many of the negro voters preferred the Charter candidates if they could not have one of their own race in the council.

The candidate who was supposed to have the backing of the less liberal forces, while barely elected in 1925, was not reëlected in 1927. The communist candidate in 1925 had 131 first-choice votes and only 221 all together before he was eliminated. He did not run again in 1927 or 1929.

It will thus be seen that racial or religious groups really have less effect in proportional representation elections than in ordinary plurality elections, because they cannot swing, or even threaten to swing, the election of an entire ticket, but at the very outside might possibly influence the election of only one candidate.

The next argument against proportional representation was that it would destroy party responsibility. If by this is meant that the voters will cross national party lines in municipal elections, be it said at once that it *will* destroy so-called "party responsibility;" and that this is a benefit rather than otherwise can be stated on the authority of no less orthodox a Republican than the late Senator Penrose of Pennsylvania, who said: "Municipal government increases in efficiency in the exact ratio in which it is divorced from partisan politics." James Bryce, in giving his reasons for stating that "the government of cities is the one conspicuous failure of the United States," cites, as one of the principal reasons for this failure, the introduction of state and national politics into municipal affairs. But though the city government is two to one non-partisan, Hoover received the largest vote that any Republican presidential candidate has received in Cincinnati.

As to whether proportional representation will result in the creation of *blocs*, nothing can be proved either way by the history of Cincinnati thus far. As long as the City Charter Committee continues to be a fighting organization and is able to elect a majority of its candidates, we are not likely to have *bloc* government in the city council. As a matter of fact, on practically all important questions that have come before the council, the questions have not been decided on party lines and members of both groups have been found on both sides of the question.

For years Cincinnati suffered from the same political ills that affect the other large cities of the United States. An essential for better-

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ment was to have an opposition that was a constant threat to the control of the Republican party, and that could take charge of municipal government when that party became discredited. The Democratic party was not able to constitute such a constant threat. The few times that it did take over the government its administration was not able to succeed itself. The independent voters were a larger group than the faithful adherents of either party, but for lack of organization they were not effective. The old election system, with its primary, party emblems, and ward contests, discouraged independent organization. The new charter has furnished a means for independent expression. The city can always elect some outstanding citizens to the council, whether they constitute a majority or not. The knowledge that they are practically bound to be elected, regardless of whether their particular party gains a majority of the votes, is a strong inducement for outstanding citizens to permit their names to go before the electorate.

Through efficient volunteer organization, particularly in the less congested residential districts, the control of the city government has been taken from the politicians who played off one party against the other and used the less fortunate citizens to turn the balance of political power. The central count has assured an honest tabulation of the ballots cast. There has been no defranchisement worthy of the name, and no racial or religious prejudices have been aroused that were not always in evidence. In fact, the threat of minority groups has been lessened. And whether because of the new type of government or because it has been a symbol for civic pride, the city has found the personnel of the new government unparalleled in ability, integrity, and scope of representation. What is more significant, the independent citizens of the city were able to elect a majority of candidates who could be, and were, reëlected. And when four out of six of these councilmen decided to retire in 1929, the independent citizens of the city elected four more in their places who give every assurance of carrying forward the banner of honest, impartial, efficient, non-partisan municipal government in Cincinnati.

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Requirements for the Doctorate in Political Science. The general insistence of American college and university administrators has resulted in making the Ph.D. degree the most important evidence that an applicant for a teaching or research position can present as proof of his training and ability. There are exceptions to this rule, of course, and a college president who had the time and the ability to make a personal selection of his men could undoubtedly recruit an excellent faculty without employing a single holder of a doctor's degree. Even in college circles, however, such a faculty would be a marvel, and among universities where graduate study is emphasized the suggestion of such a basis of recruiting would probably be considered preposterous. In the course of two generations the Ph.D. training has become accepted as the best available preparation, speaking generally, for college and university teaching. One of the first questions asked by appointing officers always is, "Does he have his degree?"

The investigation which resulted in the present article was motivated by a desire on the part of the writer to formulate a defensible set of requirements for the Ph.D. in political science at the University of Minnesota. He thought it wise to analyze the requirements in other graduate schools and departments of political science in order to discover new trends, if any exist, which seem to point to a future reformulation of the requirements. It must be said that the printed requirements revealed little of what was expected. The innovations which exist have in only a few cases reached the state of published legislation. They are still mainly in the state of custom and unwritten law, and are thus unknown to graduate students until they actually register for work. The results of the inquiry are here presented for whatever value they may have to others.

Any complete analysis of the requirements for the Ph.D. in political science would involve a consideration, not only of the length, breadth, and depth of the required training, but also of the content and quality of the work which is accepted as satisfactory. The writer wishes at the outset to disavow any claim to having made a study as comprehensive as this. All that he has done is to analyze the printed requirements, as set forth in the graduate school bulletins of the princi-

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pal American universities offering graduate instruction, and to supplement and verify doubtful points as far as possible by correspondence.[1] He is fully aware that unpublished requirements are enforced in various institutions which go beyond the minimum requirements set forth in printed announcements. He is also fully conscious of the fact that the value of the training received by a candidate depends more upon the men who guide his work than upon the formal requirements for the degree. At the same time, the published requirements, even where incomplete or out of date, have some value as evidence of the ideal standards established in the various institutions.

One more preliminary apology is probably needed. The interpretation of matriculation and graduation requirements in university bulletins is a difficult and technical matter. No doubt every university has its own expert in this field who could easily convict of total ignorance any mere outsider who attempted to offer an explanation. The difficulty for the alien interloper is increased by the many different ways the schools have of saying, or trying to say, the same thing, and the consequent doubt whether they are not trying to say something different. A standard statement of a standard requirement would greatly simplify matters for candidates for higher degrees. This should not, however, be construed as a plea for uniformity of requirements.

The general standards of attainments required for the Ph.D. degree are stated for all departments in graduate school bulletins or announcements. In addition, some departments of political science print special requirements for the degree in that field. Where such special statements are lacking, we must assume that political science students need comply with only the general regulations for the degree. It is from these general requirements that most of our information has been obtained.

Requirements as they now stand may be grouped under the following headings: (1) prerequisites, (2) linguistic equipment, (3) length of training time, (4) breadth of training, including minor subjects required, (5) distribution of work within political science, (6) thesis requirement, and (7) special courses and seminars required.

[1] Special attention has been paid to the bulletins of the twenty-seven American graduate schools represented in the Association of American Universities, and to those of some half-dozen other leading institutions.

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Prerequisites. Everywhere the general prerequisite for graduate work is the completion of an undergraduate course of study leading to the B.A. or B.S. degree. The Johns Hopkins statement is somewhat different, but the substance is the same.

To major in a particular department, a candidate would seem to require a more definite preparation in the subject, although a brilliant student may do very well without it. Some universities publish no clear statement upon this point, but rely rather on the departments to determine the candidate's fitness. At Chicago, the graduate student in political science must have had the introductory courses (American and Comparative Government) or their equivalent, and he is also expected to have some familiarity with the other social sciences. The department at Cornell has a similar requirement. At Illinois, the department specifies that the student should have had at least eighteen semester hours of undergraduate work in political science, economics, and history, of which nine must have been in political science. At Iowa and at the University of Washington, a satisfactory amount of undergraduate work in the chosen subject is required but not defined. At Minnesota, eighteen quarter credits (twelve semester credits) in the field of political science are required as prerequisites. At Nebraska, the candidate for a higher degree in political science must have completed an undergraduate major in the department, or its equivalent. Syracuse specifies nine hours of advanced work in undergraduate courses in political science and "an introductory knowledge of the other social sciences, including social psychology." At Wisconsin, students "notably deficient in their preparation," in that they fall far short of having had an undergraduate major in the subject, may be required to make up the deficiency without graduate credit in the first year of graduate work. Yale lists three basic courses, some of which students not otherwise prepared are expected to take.

This summary of some of the published prerequisites for graduate work in political science suggests, not that there are few institutions which insist upon previous training in the subject, but rather that the requirements are not always published and that departments wish to leave themselves free to accept candidates with valuable but unstandardized training for graduate work.

Linguistic Equipment. 1. *English.* Important literatures in political science are to be found in English, German, French, Italian, and other modern languages. For the American graduate student in politi-

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cal science, who may become a teacher, writer, research worker, public official, or journalist, no doubt a first requirement is the ability to write clear and effective English with a fair degree of facility. The doctor's thesis provides a delayed but substantial test of this capacity. A few of the leading graduate schools make clear requirements upon this point. At Chicago, "the candidate must show that he has a good command of literary expression;" at Columbia, he must demonstrate "his ability to express himself in correct English;" at Harvard, "a command of good English, spoken and written," is required; and at other institutions such as Cornell, Iowa, Johns Hopkins, Michigan, Minnesota, and Wisconsin, there are similar requirements, usually in connection with the thesis. A considerable number of graduate schools print no specific requirement as to English, but undoubtedly most of them tend to enforce such a requirement to some extent.

2. *Foreign languages.* There appears to be more diversity in the requirements with reference to foreign languages. The usual printed requirements specify French and German, with certain exceptions to be noted, and there can be little doubt that for political scientists these two modern foreign languages are of preëminent importance. There is scarcely any subject relating to public affairs to which scholars writing in German and French have not made outstanding contributions. Furthermore, in quantity and quality the political science literatures in French and German surpass all others except the literature in English. Hence these two foreign languages would appear to be essential tools for the scholar in political science, although not equally useful in all divisions of the subject.

Both direct and indirect attacks have been made upon the foreign language requirement for the doctorate. The studies of certain educators have revealed that many doctors of philosophy are opposed to the language requirement, that many slip through their graduate work without adequate language preparation; and that many of the latter, and no doubt some who are better prepared, make very little use of the languages in their subsequent work. A recent study of the situation, which analyzes, among others, the replies of 53 holders of the doctorate in political science, reveals that of the total number all were examined in French, all but one in German, three in Latin, four in Spanish, and one in Dutch.[2] Several therefore were examined in more than

[2] Betts and Kent, *Foreign Language Equipment of 2,325 Doctors of Philosophy* (1930), pp. 106-112.

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two languages. Based on their own estimates, only four per cent claimed excellent command of German as graduate students, 46 per cent confessed to fair ability, and 50 per cent admitted poor ability. As to French, 20 per cent claimed excellent reading ability as graduate students, 60 per cent rated themselves as of fair ability, and 20 per cent as of poor French reading ability.

Furthermore, only 13 per cent claimed increased skill in German reading after graduate study, and 53 per cent confessed to decreased skill, while for French the corresponding estimates were 22 per cent and 42 per cent. Those who answered the questionnaires also estimated the extent of their reading in the two years prior to answering. The results, with duplications apparently eliminated, were that seven had read from one to five German books each in the two years, nine others had read from ten to 250 pages each, and two from 300 to 1,500 pages each—a total of eighteen reporting. In French, seven had read from one to three books, three from eleven to 100 books, seven from ten to 350 pages, and two from 5,000 to 6,000 pages—a total of nineteen reporting. In numbers of readers and in quantities read, these figures were below the estimates for the amounts of reading in these languages during graduate study.

The reasons for decreased use of the languages after graduate study were not given in detail. One could think of many possible reasons, but would hesitate to assign proportionate weights to them. Indolence might be a factor; lack of stimulus in the environment of some institutions; lack of proper library facilities and of the latest books and periodicals; enforced cessation of German reading during the war when new books in German were unavailable, and the difficulty of again picking up the threads after the war; preoccupation with administrative duties; engrossment in research upon some American problem, where German and French writers have little to contribute—in fact any one or several of a number of factors, more or less fortuitous might have the effect indicated. None of these, certainly, could be counted as arguments against the foreign language requirements, any more than the fact that some Ph.D.'s never do any substantial research work in their subsequent careers can be used as an argument against teaching them research methods.

We are brought back, of course, always to the problem of educational ideals. What should the Ph.D. in political science represent? Most students, in formulating this ideal, are not wholly visionary. They

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look at the leaders in their particular profession in order to ascertain what useful tools and equipment they have, and permit them to be their guide. We see, in fact, that the leading teachers, writers, and research scholars in political science are almost constantly, and necessarily, using French and German works. Their use of these foreign tongues both broadens and enriches their writings. If these language tools are so highly useful to the leaders, we ought to see that every graduate student is equipped with the same tools, since every one is a potential leader in his profession. This does not at all mean that every man will use his tools, or that good research work cannot be done with other tools and without the use of foreign languages.

Although much more might fruitfully be said upon this subject, we pass on to observe that several new factors are operating in political science to increase the importance of the foreign languages. The rapid growth of the fabric of international institutions since the War, the increasing recognition by nations of their international relations and obligations, and the constant increase in the number of international conferences, scientific, economic, administrative, and political, have made political science increasingly an international subject. The attempt also in the social sciences to break down the artificial boundaries which have separated political science, economics, sociology, and other disciplines from each other is giving new importance to French and German sociology, economics, and public law for the American political scientist. In addition, with the successful establishment of *Social Science Abstracts,* the best of the world's scientific literature in the social sciences is now brought conveniently and regularly to the attention of American scholars, and there is less excuse than ever for the scholar who does not frequently consult foreign periodicals and books.

Frontal attacks upon the requirements of German and French have generally failed, but flank attacks have had some success. These have usually taken the form of permitting substitutions, for in many instances such substitutions can be supported by highly plausible arguments. A graduate student who is set to work on a thesis in Latin American government or diplomacy, or in Dutch colonial policy, may find Spanish or Dutch more immediately useful in his research, and can argue that it is unfair to ask him to know both French and German in addition. It would appear from the published requirements that such a plea would have no effect at Cincinnati, Cornell, Harvard, Illinois, Michigan, Princeton, Nebraska, North Carolina, Northwestern,

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Texas, Washington University, George Washington, Yale, and Wisconsin. A reading knowledge of both French and German is required at these institutions, and apparently without exceptions. Other languages required for research, if any, are in addition to these two.

The rule is otherwise at certain other institutions. The graduate student at Columbia must show ability "to read at least one European language other than English," and such additional languages as his department may deem essential. The department of public law and jurisprudence (political science) seems to require both French and German for one of its fields, but permits Latin to be substituted for German in the field of international law and relations, and for either French or German in Roman law and comparative jurisprudence. For American government and constitutional law, French or German is the normal requirement. California permits Oriental students in political science and a few other departments to substitute English for either German or French, and permits other substitutions to be made by non-Orientals on recommendation of the department concerned to the graduate council. Chicago in its general statement definitely permits a student, on recommendation of his department, approved by the dean, to substitute "any other Germanic language" for German, "and any other Romance language for French," but the department of political science as definitely states in its announcement that it requires both French and German. Johns Hopkins, instead of specifying French and German, requires the candidate to be able to "translate at sight not less than two modern foreign languages designated as essential by the department in which he is a student." The department of political science at Johns Hopkins adds, however, that "except in very special instances, the student will be expected to have a reading knowledge of French and German;" and exceptions are very rare. New York University, Ohio State, and Syracuse have requirements similar to the general one at Johns Hopkins with reference to two modern foreign languages. A number of other institutions, such as Indiana, Iowa, Kansas, Minnesota, Missouri, Pennsylvania, Stanford, Virginia, and University of Washington, state a requirement of French and German, but permit substitutions in some cases, more or less rare, where the substitute language will be "of greater service in the major field," or words to that effect.

To what extent shall the student know his foreign languages? Obviously these are tools which he should be able to use readily to master

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his materials printed in other tongues. Ability to read and translate is, therefore, the usual and the sensible requirement, and no school goes so far as to require the ability to write or speak the language. The reading requirement appears in different forms in different graduate school announcements, and undoubtedly there is much diversity in the interpretation of the degree of proficiency really desirable. The ability to read understandingly materials in one's own field, without excessive reliance upon the dictionary, would seem to be a minimum standard. Whether the language department or the subject-matter department is best qualified to give this test will depend somewhat upon local conditions.

How early in his graduate career should the student prove his ability to read foreign languages? Ideally, he should know his tools before he begins to take seminar courses, and certainly before he begins work upon his thesis. If a student first takes a master's degree in a university which requires a reading knowledge of one foreign language for the degree, he will usually be able to use that language during the last two years of graduate work. The rules usually stipulate, however, merely that "before admission to candidacy," or "before taking the preliminary examination," the student must demonstrate his knowledge of the languages. This may mean less than a calendar year, and in some cases as little as seven months, before the final examination; and the thesis may have been begun long before the language tests are taken. Obviously the requirement has not attained one of its objectives where it permits the examination in the language to be put off to so late a date. It must be evident, also, that unless the graduate student is compelled to use his language tools in courses during his student years he will be relatively inexperienced in handling them and will be less inclined to use them in after years. Pennsylvania, which has an unusual formulation of the requirements for the degree, has taken a forward step in providing that "in the case of students who enroll after June, 1927, a period of not less than two years must elapse between the satisfaction of the modern language requirement and the final examination." Cornell stipulates that the candidate must show his reading knowledge of French and German "before beginning his second year of residence." At Princeton he must show ability to read one language by the end of his first year of graduate study, and to read a second language by the end of his second year. Surely these requirements move in the right direction.

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Length of Training. The graduate school bulletins state in most cases only the minimum period of time required for the work which leads up to the Ph.D. degree. At California, Columbia, Harvard, and Princeton, not less than two academic years of graduate work are required. How much more than this is normally exacted does not in each case appear, although Harvard stipulates that the degree "is not usually taken in less than three years," and Princeton "that in all but the rarest cases three years will be found necessary." The Johns Hopkins University requires students who register for the Ph.D. as juniors to devote at least four years to obtaining the degree, but students who enter with the A.B. degree are in fact required to devote at least three years to graduate study before obtaining the doctorate. Over half of the institutions whose requirements were examined (Cornell, Iowa, Illinois, Indiana, Minnesota, Missouri, Nebraska, New York University, Northwestern, Ohio State, Pennsylvania, Stanford, Syracuse, Texas, Virginia, Washington University (St. Louis), University of Washington (Seattle), George Washington, Wisconsin, and Yale) specify "at least" or "not less than" three years of graduate study. The others indicate that three years is the "normal," "usual," or "ordinary" requirement, but in some cases they leave the impression that in exceptional cases less than three years may suffice. No matter what the graduate school bulletins say, however, there appears to be no great deviation in practice from the standard requirement of three years of full-time graduate study. Furthermore, the tendency appears to be upward rather than downward.

The difficulties of defining full-time graduate work are serious, however, and have not been entirely solved. There are numerous cases of students doing teaching or other work for pay while pursuing graduate study, of students whose careers are interrupted by illness or by the necessity of dropping graduate studies for remunerative work for a year or more, and of students who try to pile up "credits" in summer schools to meet residence requirements. There is every possible case from that of the capable and well financed student who goes directly from undergraduate to full-time graduate work and completes the requirements in three years, or possibly even less, to the student whose work proceeds slowly through many interruptions and intermissions for six, eight, or even more years.

How to measure such careers fairly without counting courses it is very hard to say, and yet it is everywhere agreed that the mere ac-

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cumulation of course credits should not entitle any one to the degree. Knowledge of subjects, and proved ability to do research work of a high order are, in the end, the most important tests of achievement in graduate work. One department head goes so far as to say that he pays no attention whatever to courses and credits. There is, however, no necessary incompatibility between the two methods of measurement. Quantity needs to be gauged as well as quality. It is perfectly reasonable to say to the student: "Courses are the most convenient units we know in which to measure the quantitative extent of your mastery of a field of work. We insist upon a certain quantitative achievement on the part of every candidate for the doctor's degree, and we decline to examine you for the degree until you are well along toward the completion of that certain quantity of work. We hasten to add, however, that whether you obtain the degree depends finally on the quality, and not on the quantity, of your work. Even though you have completed enough courses with satisfactory grades, you may still fail to measure up to the standards of quality which we test by final comprehensive examinations."

In measuring quantities of work, the graduate schools follow different rules. Some seem to assume that a program of fifteen credit hours per week is normal; others use twelve hours per week, or even less, as standard. In three years, or six semesters, fifteen hours per week would yield ninety credits; but of course this would include thesis work as well as work in courses. For good reasons, the student who carries a heavy burden of teaching or other outside work cannot be credited with doing full-time graduate work. For other, but also good, reasons, the student who has other obligations and appears for summer courses only is in some places required to put in additional time to satisfy residence requirements. In the latter cases, also, a few institutions limit the total time within which the graduate work may be done. To cover cases where there have been long interruptions of graduate work, Chicago has a rule that, "with the approval of the dean, a department may decline to examine for a higher degree on work done at a date so remote that it no longer represents current scholarship in the subject." Columbia provides, differently and more drastically, that "no student may continue to be a candidate for the degree of doctor of philosophy for a longer period than three years from the time he ceases to be in residence, nor for a longer period than six years from

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the time of his initial registration for a higher degree.'' This rule clearly covers more ground in some ways than the Chicago rule. Pennsylvania provides that ''the entire period of study for the degree shall extend over not more than seven consecutive years.''

Breadth of Training. Breadth and depth in graduate study are closely related problems. Given the normal three to four year period of study, the student may use it either to imbibe deeply at a few of the springs of learning in the university, or to taste, but drink less deeply, at a larger number. Naturally, the requirements and the facilities of the institution will have much to do in determining the course he will follow. He may be required by the regulations to spread himself over a number of fields, or he may be permitted to devote all or most of his time to one department, or even to one division of the work in the department. We reach here the central problem as to the nature and purpose of the Ph.D. training. Is the degree to represent narrow but thorough specialization, or is it to be the token of broad scholarship carried a long stage beyond the A.B. degree?

For any subsequent pursuit, whether teaching, research, journalism, or public service, the ideal equipment is no doubt a combination of broad scholarship with a high degree of specialization in one important field. Successful preparation of an acceptable thesis is a partial proof of ability to master one limited field, and for this reason a thesis is everywhere required for the doctorate. The more emphasis put upon this requirement, however, the less time is left for other work; and no extensive analysis is required to show how little time may be left for other things in a three-year period.

Suppose we consider the entire three years as amounting to 100 per cent. We may divide this between (a) thesis, (b) major subject, and (c) minor subject or subjects, in any way we see fit. The following are some examples:

	Thesis	Major Subject	Minor
Division 1	50%	35%	15%
2	40%	40%	20%
3	33%	50%	17%
4	33%	45%	22%
5	25%	50%	25%
6	33%	67%	—

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The first proposed division is probably rare, since it involves devoting at least a year and a half to work on the thesis. Under this plan, only about one year could be devoted to subjects in the major, and about a half-year to minor subjects. At the other extreme, division 5 is probably rare in putting too little emphasis on the thesis and too much on the minor. It would allow a year and a half to the major subject, which is hardly too much, and about three-fourths of a year each to the thesis and the minor subject.

The intermediate divisions, 2, 3, and 4, are probably most common. They allow a year, or a little more, on the thesis, just over a year to a year and a half on the major subject, and about a half-year, or a little more, to the minor subject. Obviously, the pie is not large enough to make each of the slices as large as it should be.

How shall the difficulties be solved? One way is to require more than three years for the doctorate. This tendency to lengthen the time for professional training has been noted in medicine and certain other fields. It may come, and perhaps is already coming, in the case of the doctorate of philosophy; but that question is outside the scope of this article.

Another solution is to reduce the emphasis on the minor field or fields, or even to eliminate the minor requirement entirely. By a "minor" is here meant a field of study or a subject outside of the major department. Under present printed regulations, there is no clear and positive requirement of such a minor at California, Chicago, Cincinnati, Columbia, Johns Hopkins, Michigan, Ohio State, Pennsylvania, Washington University, University of Washington, George Washington, and Yale. Several institutions require a minor, or even two minors, to be taken, but do not make it clear that the minor must be in a different department. On the other hand, the requirement that a political science major shall take a minor in some outside department is very clear in the announcements of Harvard (two minors), Illinois, Indiana, Kansas, Nebraska, New York University, Northwestern, Stanford, Syracuse, Texas, and Wisconsin (two minors). The requirement in certain institutions of two minors should not be construed as involving twice the usual emphasis on the minor work. At Wisconsin, both minors may be in one department, such as history or economics.

Of course the candidate's adviser or his committee usually may, and probably generally does, require an outside minor even where the

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regulations omit a specific requirement to that effect. At a time when the close interrelations of the social sciences are once more being stressed, and when numerous research and teaching projects cut across departmental lines, it would probably be generally considered unfortunate if any one of the social science departments limited the training of its Ph.D. candidates to its own field. Where such requirement exists in fact, it is unfortunate not to have it published.

On the other hand, to stipulate any particular required subjects outside the department would probably be going too far. Minors should articulate with major subjects, and a minor which would be highly useful in one case would have less value in others. From ten to twenty years ago, the greatest stress seems to have been placed on history, law, jurisprudence, and economics, as supporting subjects for political science. More recently, much attention has been given to sociology, psychology, and statistics, with frequent mention also of anthropology, biology, and geography. Obviously no student has time to delve into all of these border-lands, nor would all be equally fruitful for him. The student specializing in international relations should undoubtedly take a great deal of history, but he would probably find statistical method of much less value. A student specializing in politics and parties needs to dip into psychology, economics, and perhaps statistical method, but probably needs less of law and jurisprudence to understand his chosen field.

Distribution of Work Within Political Science. We have now had a glimpse of what is required for the degree outside of political science departments. Another factor in breadth of training is the distribution of studies required within the department. At this point we need to remember that political science departments now have very extensive offerings of courses. If a student were today required to familiarize himself with all the subjects taught in a large department of political science, this work alone would give a considerable breadth to his training. His subjects would range from international law and relations to rural local government in his own state, from the most practical courses in public administration to the most theoretical courses in political philosophy, and from the political behavior of individuals to the government of great states and empires. As a matter of fact, probably no large department requires a candidate for the Ph.D. degree to cover thoroughly its entire field. Some permit a high degree of specialization, whereas others require a fairly wide distribution of

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work within the department. The question of what a Ph.D. in political science should know has not been answered in the same way by any two departments, and in fact the majority of the departments appear not to have prepared any rules whatever on the subject. Let us look at the requirements of the few which have formulated their regulations.

Columbia University appears to permit the highest degree of specialization. In the department of political science ("public law and jurisprudence") are grouped four fields of study, namely (1) American government and constitutional law, (2) European governments, (3) international law and relations, and (4) Roman law and comparative jurisprudence. "The prospective candidate for the degree . . . . must select one of these as his subject of primary interest. As a subject of secondary interest he may select one of these or any other subject listed" in the Division of History, Economics, Public Law, and Social Science. Thus it would appear that if he chooses as a secondary or minor subject some study outside of the department, he need offer only one of the subjects within the department. In point of fact, however, in the course of the normal three years of work it is almost inevitable that the candidate will have covered, in courses, one or more other subjects.

Yale also specifies four fields of work, namely, (1) political theory and its history, (2) comparative politics (a field which may be subdivided), (3) public law, and (4) international relations. It requires the candidate to choose one field of concentration from among the four for special work, "and to take such courses in other fields as shall be considered supplementary to his major interest." "Whatever his field of concentration, each student will be required to give evidence in an oral examination of an understanding of the principles of political science and public law, the development of political institutions, and the relation of political science to the other social sciences."

Princeton does not publish a list of fields of concentration within political science, but its regulation is that the candidate "is expected to have acquired a broad, general knowledge of the subject which he has chosen and a comprehensive and detailed knowledge of some one main division of it." The Johns Hopkins requirement is similar to this, but the department supplies the candidate also with an extensive reading guide covering all important fields of political science.

It may be noted that the Johns Hopkins, Yale, and Princeton regulations are similar in requiring a general knowledge of the whole field

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within the department and a highly detailed knowledge of some major division of it. No one of these institutions by its printed regulations positively requires every major in political science to have an outside minor subject, but all seem to recommend such a course.

Harvard, in addition to requiring two minors, requires a broad distribution of work within political science proper. All the subjects covered in the department are distributed into four groups, with from one to three "fields" in a group, making nine fields in all, as follows: Group A (1) political thought and institutions; Group B (2) American constitutional law; (3) international law; Group C (4) national government of the United States; (5) state and local government; (6) municipal government; Group D (7) comparative modern government; (8) the government of dependencies; and (9) international government and international relations. The candidate must present himself in four of these nine political science fields, including field 1, also either 2 or 3, and any two others.

The Pennsylvania requirements (not printed in the graduate school bulletin) are unusual. Each candidate for examination must show an acquaintance with ten outstanding works in political science, chosen from a list of forty-one, and including Plato's *Republic,* Aristotle's *Politics,* Hobbes' *Leviathan,* and Locke's *Two Treatises of Government.* He must also present himself in comparative politics and in three other subjects chosen from a list of ten, namely: (1) international law; (2) foreign policy of the United States; (3) administrative law; (4) history and theory of the state; (5) municipal government; (6) American government (advanced); (7) public finance; (8) business law; (9) Latin American relations; and (10) parties and public opinion. An outside minor may also be required.

In the Middle West, Chicago and Wisconsin present interesting variations in their requirements. The Chicago department offers work in five fields, namely, (1) political parties and public opinion, (2) public administration, (3) political theory, (4) international law and diplomacy, and (5) public law. From these five the candidate selects one field for his dissertation and also for his final oral examination. Having made this choice, he is required by the department to take written examinations upon each of the other four fields. These examinations come at stated times each quarter, and are in addition to other examinations required by the university regulations.

Wisconsin makes the same number of subdivisions in the field of

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political science as Harvard, and has very similar requirements. The nine fields of concentration offered are: (1) history of political thought, (2) comparative government, (3) international law, (4) international organization and procedure, (5) world politics, (6) public law, (7) public administration, (8) politics and public policy, and (9) legal history and jurisprudence. In a supplementary typewritten statement the courses which fall within each field are listed and the general scope of the field is defined, but this statement serves only as a general guide for the candidate. "The candidate must offer himself for examination in field 1 and four other fields so selected as to include at least one field in each of groups 2-5 and 6-9. The candidate will be expected also to give evidence that he is well informed on political methodology and bibliography." In addition, as noted above, the candidate must offer two outside minor subjects chosen from economics, sociology, history, philosophy, law, or other fields.

Nebraska has a requirement similar to that of New York University. In the latter institution the work in political science is divided into five fields: (1) American government, (2) comparative government, (3) political theory, (4) constitutional law, and (5) international law and relations. Of these, the candidate for the Ph.D. must offer three, in addition to an outside minor. Nebraska's divisions are seven: (1) national governments, (2) American state government, (3) local government, (4) public administration, (5) public law, (6) international relations, and (7) political theory. As at New York University, the candidate must offer three of these, in addition to a minor from some other department.

Three Pacific Coast institutions have also published regulations governing the work in political science. At California the fields are: (1) political theory and public law, (2) international law and relations, (3) American and comparative government and politics, and (4) municipal government and public administration. The candidate must "show high attainment and mastery in one" of these fields and must also reveal such knowledge of the others "as may be thought appropriate to the thorough exploration of the special field." For Stanford's requirements we quote from correspondence. "The fields which we offer in the department are as follows: theory, public law, politics, administration, international relations, and comparative government. We expect a major to cover four fields, and a minor to cover three fields, except that, in special cases, we might rearrange the

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fields slightly, for example, by the inclusion of international law as either public law or international relations. We sometimes substitute the field of public finance . . . . for a portion of the work given in this department.'' At the University of Washington political science is divided into four fields: (1) political theory and jurisprudence, (2) international relations, (3) national government, and (4) local government. A candidate for the doctor's degree must register during each quarter of residence in the general graduate seminar and also in two research seminars, one of which must be in the field of special investigation.

Thesis Requirement. There appears to be no exception to the rule that a thesis is required for the Ph.D. degree. Neither is there any substantial variation in the printed statements as to what is expected in the thesis. It should be based upon research; it should give evidence of research ability; and it should to some extent make a contribution to knowledge. The scope and extent of the thesis cannot, of course, be prescribed, but it appears to be assumed as a rule that the equivalent of a year or more of the candidate's graduate work will be devoted to the preparation of the thesis. As a rule all, or at least a large part, of the last year is expected to be devoted to the dissertation.

This is very little to say about so important a requirement, but one can hardly say more without getting into very controversial questions and finding oneself without the necessary data for his conclusions. Whether the thesis requirement really fulfills its purpose in training men in research, and whether the theses produced have any value or add much, if anything, to the world's stock of organized knowledge, are questions which cannot be answered from a reading of the Ph.D. requirements. Only by a critical examination of a considerable number of approved dissertations of recent years could one obtain any information worth presenting.

Required Courses and Seminars. The general rubric ''political science'' covers a number of different subjects and interests. As we have previously noted, it is a far cry from a course in rural local government to a course in political theory or in international relations. Without some effort to maintain a certain group unity, the teachers and graduate students in a large department are likely to find themselves drifting apart into their own special fields. Partly to bring about the unity which is supposed to be desirable, and partly for other purposes, a number of political science departments have for years

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brought together from time to time all graduate students and faculty members in the department in joint seminar meetings, "journal clubs," and other types of gatherings. In some places attendance by the graduate students has been practically required. Attention may be called in this connection to the weekly seminars at Illinois, Johns Hopkins, and Minnesota, the Journal Club at Michigan, the Historical Conference in conjunction with the history department at Ohio State, the special provision for graduate students and faculty members to be together almost daily at the state historical society at Iowa, and the graduate research seminars at Northwestern, Stanford, Syracuse, and the University of Washington.

While it is likely that no two of these different organizations have the same nature or methods, the tendency probably has been to encourage participation by both graduate students and faculty members. Each will in turn contribute something from his research or reading, and the others will participate in the discussion. Long before their theses are finished, graduate students will read portions of them to the group and receive therefrom most beneficial criticisms. The weaker students may wilt under such fire, and even withdraw, but the abler ones are probably improved by the experience. All members of the department faculty, at the same time, have early and frequent opportunities to estimate the worth of the students.

The increase in the size of such groups has, of course, a slightly detrimental effect. The more numerous the students, the less frequently comes the opportunity of each to participate. With this change comes also a loss of the sense of individual responsibility for the success of the gatherings.

In recent years another useful function has been found for these joint sessions of graduate students. The attempts which have been made within the past ten or twenty years to give a higher scientific character to the work of political scientists has resulted in their putting a new stress upon the scope, the materials, and the research methods of their subject. In some of the joint seminars, regular attention has been paid to research and teaching methods, bibliography, and related matters of interest to all graduate students. Although each student has a different field of research, all have a common interest in the tools of their trade and in how, when, and where to use them.

This development is even better illustrated, it would seem, by the course at Harvard entitled "Materials and Methods of Political Sci-

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ence,'' which is required of all graduate students during the first year of their work in research courses. At Chicago there is a similar course, ''Introduction to Political Research,'' which all first-year graduate students are urged to take, and there are also separate courses for graduate students in bibliography and in teaching methods. The course in ''Modern Political Scientists'' is required of all candidates for the doctorate at Iowa. Optional courses in research methods are given also at Pennsylvania (''Research Methods''), at Ohio State (''Methods of Governmental Research''), and no doubt at other institutions; while at Syracuse the graduate seminar is devoted largely to the ''discussion of the literature of the social sciences [and the] analysis of the methods of research and of the various approaches to the problems of the social sciences.''

Those who are interested in the development of the new psychological approach to the study of politics, and in the application of statistical methods, may well inquire whether training in psychology and in statistics should not be required of all candidates for the Ph.D. degree in political science. Remembering the diversity of interests of graduate students and of teachers in political science, and considering also the close and important relations of history, economics, philosophy, and other studies to our own field of work, the writer would hesitate to accept in full so sweeping a proposal. He can say that he has sought diligently for evidences of such a requirement, but has found nothing beyond the fact that the departments at Chicago, Harvard, and Syracuse, among others, put great stress upon psychology and statistics, without absolutely requiring their students to present subjects in these fields.

Examinations and Tests of Quality. In his courses, in his conferences with his adviser, and in his thesis work, the candidate's ability is constantly being tested. Should he fail to maintain a respectable grade in his courses, he should be discouraged from continuing his studies. Near the end of his second graduate year, as a rule, he also usually undergoes a more comprehensive examination, written or oral, or both, covering his major and minor fields, except that the special field of concentration in which he writes his thesis may be reserved for the final examination. The preliminary examination, sometimes called the qualifying or general examination, is one of the most decisive tests of true quality as well as of breadth, depth, and accuracy of knowledge. Mental alertness, reasoning power, ability to speak clear

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English, tact, and many other qualities are incidentally tested also in the preliminary oral examination. If a candidate is in any way below standard, he usually reveals it at this stage. He is then either warned or required to repeat the examination or completely eliminated from candidacy.

Having passed his general or preliminary examination, and having had his dissertation approved later by the appropriate committee of the graduate school, the candidate presents himself for final examination. Usually a period of from seven months to a year must elapse after the preliminary before the final examination may be taken. This, the last test of his proficiency, is conducted by a committee of the graduate school, consisting usually of upwards of five professors. As a rule, the committee includes the thesis committee, representatives of major and minor departments, and one or more outsiders. The examination is oral and lasts generally from two to four hours. In theory, the examination is public, but as a rule no tumultuous throngs swarm the examination room. The subjects of the final examination are the thesis, the field of concentration, and the relation of the two.

The two preceding paragraphs outline the usual procedure, but some graduate school announcements would be searched in vain for the information here given. In some cases the preliminary examination is not mentioned; in others it is provided merely that the department may give such an examination. It is, in any case, primarily the affair of major and minor departments. The thesis and the final examination more directly concern the whole graduate school.

Suggested Changes in Requirements. The foregoing analysis of prevailing requirements for the Ph.D. in political science, with its incidental commentaries, has no ulterior motive. It is not proposed that universities adopt uniform requirements, and nothing herein written should be taken to imply that in the writer's judgment one regulation or set of regulations is better than another. If anything at all might be said to arise naturally out of the statement up to this point, it is that the requirements for so important and expensive a training as that for the doctor's degree in political science should be carefully worked out in the light of the best available knowledge, and that they should, in fairness to possible candidates, be clearly and fully stated in the published graduate school announcements.

Originally there was no intention to set forth herein any proposed reforms. So many interesting suggestions of this kind have come to

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the writer, however, that he feels justified in using a few more pages to state them for the consideration of others. The mention of a proposed innovation should not, however, be taken as a plea for its adoption.

1. It is frequently suggested that there should be two Ph.D. degrees in political science, one for those who are going to teach, and the other for those who are going into research work, governmental work, and other non-teaching activities. It is not clear just how the training for the two groups would differ, but it has been suggested that the teaching group should not spend so much time in research and should give some time to the study of teaching methods and problems.

It may be pointed out, however, that teaching is not the same at all levels from high school to graduate school, that here again training might have to be differentiated according to the level at which the student plans to teach, and that, furthermore, there is no complete unity of interests and needs in the other group either. If we begin to differentiate, we may be led logically to establish a different set of requirements for every specialty in the field—international law and relations, public administration, and what not. Except as to training in teaching methods as such, present Ph.D. requirements already allow a considerable variation while still preserving some unity in the training given.

2. Directly advocating the foregoing proposed change are those who believe that every recipient of a Ph.D. degree should have some training in pedagogics—although the word is now sedulously avoided. The familiar argument is that, since a great majority of men receiving the degree are going to teach, they should learn something about teaching in the course of their training.[3] Having succeeded in many states in introducing requirements that teachers in the secondary schools shall have taken courses in education, the teacher-training institutions are now anxious to introduce similar requirements for those who are to teach at the college and university levels. It should not surprise the readers of this article to see a few graduate schools try experiments along this line in the near future.

Toward such experiments most readers will probably (and may we

[3] Haggerty, "Occupational Destination of Ph.D. Recipients," *Educational Record*, October, 1928; *ibid.*, "The Professional Training of College Teachers," *North Central Association Quarterly*, vol. 2, p. 108 ff; Kelly, "The Training of College Teachers," *Journal of Educational Research*, December, 1927.

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not add properly?) assume an attitude of honest skepticism. Whatever may be said for the attempt to teach grade-school and high-school teachers how to teach, as distinct from teaching them the subject-matter they are to teach, the case for teaching pedagogy to college and university teachers still remains to be proved. At the same time, something may be said in favor of having departments of political science themselves give some attention to the problems of teaching government at the college and university levels. There are certain problems involved in the construction of political science curricula in institutions of different sizes and types, in the planning of courses, in the giving of the beginning course, and so on, which are worthy of some attention. A course in the scope and methods of political science might well be the vehicle for conveying to graduate students some ideas about teaching problems. This is, of course, already done in some institutions.

3. The charge, often heard, that political science as taught in colleges and universities, is theoretical and impractical, cannot today be substantiated. It contains just enough truth, however, to suggest the observation that every intelligent effort to make the study more practical and realistic is worth while.

The Ph.D. in political science, unlike the M.D., is not going to practice on human bodies, but he is going to practice on minds, the very stuff from which our institutions are made, and with increasing frequency he is called upon to prescribe for the ills of sick city governments, counties, states, and even nations. To be a safe adviser in public affairs, as well as to enrich and strengthen his teaching, the political scientist needs some of the realistic experience which comes from close contact with government. It has been suggested, therefore, that a year, more or less, in each graduate student's training should be devoted to some very practical work in government and administration. Whether this should be a year in addition to the three years usually required will depend somewhat upon circumstances.

How to get the suggested practical experience is the real problem. For the fields of international law and relations, and for comparative government, a year to be spent abroad in observing the League of Nations and other international bodies at work, or in studying at first hand the political institutions of foreign nations, might be required where circumstances permit. Another use to be made of such a year would be to enable the student to learn to speak a foreign language. An alternative to the year abroad for some of these students might

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be a year spent in Washington in some work for the State Department.

For the fields of local government and public administration, a year spent in the state or local public service, or in a bureau of government research or a legislative reference bureau, or in working for a league of municipalities or some great civic or political organization, might prove a desirable substitute for the year abroad; and for the field of colonial government a period in some public service in the Philippines or Porto Rico might be suggested. It would take time and patience, of course, to work out with civil service commissions and appointing officers the arrangements necessary for putting nascent Ph.D.'s at work for the public, but this can in time be done, and is no argument against the fundamental plan. The plan is, however, open to some objections, notably the one that many types of public service employment have little value as training or experience.

4. The importance to the future teacher of politics of having studied at more than one institution has frequently been asserted. The argument runs that when a student has taken an undergraduate major in political science at one institution, he would as a rule benefit by taking his Ph.D. in another. By doing so, he to some extent avoids provincialism, he comes to know the points of view of the men in more than one institution, and he is usually able to observe politics in more than one state. He gets the advantage, also, of having his work and abilities tested by two different faculties, and of gaining their sympathetic backing in seeking a position suited to his capacity and interests.

Having first attached himself to one institution, however, many a student finds it hard to shake himself free to seek other places. He finds the expense of moving considerable, and he encounters very real difficulties in adjusting himself to a new academic environment. Some students, as it were instinctively, avoid these difficulties. For the impecunious student who has started out at a school well endowed with scholarships to move to a school less adequately endowed in that way involves a possibly unbearable financial sacrifice. On the other hand, if he has started out at an institution having few valuable scholarships, he finds when he tries to move to one having more of these perquisites that he cannot compete on terms of equality with students who are better known to the scholarship committee. If he receives anything, it will probably be a small scholarship, sufficient to pay only his tuition. For a year at least, he is on trial.

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Furthermore, if he moves in the course of his graduate work from one institution to another, he sometimes finds that he is compelled to spend more time than he expected in order to get his degree. This is often due to difficulties in getting adjusted, to differences in requirements, and to the lack of any fixed rule for computing residence in the various institutions. Time spent in summer schools seems to be especially hard for graduate schools to compute and to credit.

These are only a few of the obstacles encountered by migratory students; others will readily occur to any one who has had experience with them. Some of the obstacles can be overcome by the deans of graduate schools. Perhaps some wealthy foundation might be persuaded to assist capable students over some of the financial obstacles incident to migration. All things considered, however, it is felt that migration has so many advantages that it is a question whether more schools should not require candidates for the Ph.D. to have studied for at least one year in some other university.[4]

5. The value of a year or more of foreign travel, study, and observation has so frequently been asserted that it needs only to be mentioned here. For the field of politics, it has, perhaps, a special importance, but it needs to be well planned and to include some months of very serious study if it is really to bear fruits of value.

One especial advantage from such a period of foreign study should be the opportunity to learn to speak a foreign language, as mentioned above, and to read it with ease and rapidity. Contact with learned men and organizations, a knowledge of the local press of the country, and some acquaintance with the political leaders and the conditions of political life therein would, of course, have a high value to the future teacher of political science.

6. To return to proposed changes more easily obtainable, we may mention the suggestions for variations in the thesis requirement. Although the charge is not frequently heard in political science, one does occasionally encounter an objection to the dull digging which in some cases must be done to gather the needed data for a dissertation. It is sometimes suggested, therefore, that a well reasoned essay presenting

[4] The requirements for the degree at Nebraska include this sentence: "Candidates who are graduates of the University of Nebraska are expected to devote at least one year to study at another institution, in order to broaden their academic contacts."

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a distinctive philosophy or point of view in politics, or that a series of shorter essays, might be accepted in lieu of the usual research thesis. Under such a plan, a student of fairly wide reading and some literary skill might prepare a thesis without undergoing the supposed drudgery of carefully compiling a considerable quantity of data. The objections to such a plan, from the point of view of research training, need hardly be advanced here. In fact, the proposed change itself is none too clear. Another proposal, that a work already published should be accepted in lieu of the usual dissertation, is undoubtedly worthy of some consideration. Much will depend upon the nature of the published work and the conditions under which it was prepared.

Were a year in some branch of public service to become a requirement for the Ph.D. in political science, a piece of work performed in the course of such work and adequately reported and documented might also be a substitute for the usual type of thesis, which is so frequently written from books. If a candidate set up and carried out a budget procedure for a city or county, or surveyed and reclassified a city's personnel, or codified a city's charter and ordinances, or prepared a ten-year improvement plan for his state, why should not such a piece of work be accepted as a thesis? A little of this sort of thing is already done. In a fairly fruitful way, it combines with the thesis requirement the practical experience suggested above.

7. Any analysis of the requirements made and the subjects offered in the various graduate schools must lead to the conclusion that a Ph.D. in political science may represent any one of many different varieties of training and preparation. Granted that no person can now cover thoroughly all branches of the subject, the resultant variation in training is, no doubt, inevitable, and it may be in part desirable. Would there not be some gain, however, if every candidate for the degree had to present some central core of subject-matter which was required of all? For example, would there not be general agreement that every candidate should be thoroughly familiar with some fifteen or twenty classic and standard works in the general field? Should any man be permitted to receive the degree without knowing Aristotle's *Politics,* Plato's *Republic,* Machiavelli's *The Prince,* Hobbes' *Leviathan,* Locke's *Two Treatises of Government,* Rousseau's *Social Contract,* Bentham's *Fragment on Government,* J. S. Mill's *Liberty and Representative Government, The Federalist,* and the *Communist Mani-*

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festo, together with some five or ten other important works, in addition to his other subjects? Many persons would undoubtedly include a number of modern and recent works in the list.

Some such requirement is now being made in a few graduate schools, including Harvard, Johns Hopkins, Pennsylvania, and Wisconsin. Were the same principle to be accepted in other graduate schools, it would not be difficult to get substantial agreement upon the works to be included. Aside from the specific knowledge gained by his reading of such materials, the student would acquire also from some of these works something of the synthetic and philosophical point of view, and would learn to value the attempt to see the problem of government as a whole.

A study by all graduate students of the scope, the methods, and the problems of political science as a scholarly discipline, and of the relations of this study to kindred subjects, would also have a unifying effect. As we have already pointed out, however, something of this nature is already being done at several institutions.

WILLIAM ANDERSON.

University of Minnesota.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The twenty-sixth annual meeting of the American Political Science Association will be held at Cleveland, Ohio, December 29-31. Other organizations meeting at the same time and place include the American Economic Association, the American Sociological Society, the American Statistical Association, the American Association for Labor Legislation, and the American Association for the Advancement of Science. The headquarters of the American Political Science Association will be at the Statler Hotel (instead of the Hollenden, as announced tentatively in the May number), and in view of the large number of organizations meeting in the city at the time it is suggested that members will do well to make reservations a good while in advance. The program, as thus far arranged, is outlined by the chairman of the program committee, Professor William Anderson, of the University of Minnesota, as follows: "Six round tables will be conducted concurrently through the three mornings from 9:30 or 10:00 until 12:00 or 12:15. The round tables and their leaders are as follows: (1) International Law and Relations, J. W. Garner; (2) Public Opinion and the Behavior of Voters, A. N. Holcombe; (3) Political Theory, F. W. Coker; (4) Public Administration, J. M. Gaus; (5) Legislatures and Legislation, A. R. Hatton; (6) Public Law and Jurisprudence, E. S. Corwin. On Monday afternoon there will be an innovation in that, instead of a general session, there will be four section meetings running concurrently. The sections, with their presiding officers, will be as follows: (1) The Teaching of Government and Politics, K. F. Geiser; (2) Comparative Government and Politics, H. R. Spencer; (3) Colonial Government and Administration, D. P. Barrows; (4) Local Government, H. W. Dodds. The papers to be read and discussed at these meetings will be announced later. The presidential addresses of the presidents of the American Political Science Association, the American Economic Association, and the American Sociological Society will be delivered at a joint meeting at 8:00 P.M. Monday. The luncheon meeting at 12:30 on Tuesday will be utilized to hear reports from the Association's representatives on the

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Social Science Research Council and other learned bodies, and perhaps also to hear a report of progress from the Committee on Policy. This session will be followed at 2:30 by the annual business meeting and election of officers. The plans for that evening are in the hands of the Social Science Research Council, and cannot be announced at this time. Other luncheon meetings are being arranged for Monday and Wednesday noons. One of these may be devoted to a brief symposium on the British Commonwealth of Nations. On Wednesday afternoon, at 2:30, there will be a joint session with the American Economic Association on the power problem. On Wednesday evening it is planned to have a dinner and smoker, without papers or addresses."

Professor Morris B. Lambie, of the University of Minnesota, is conducting an officially authorized survey of the personnel of the city government of Minneapolis. The work is part of a survey of the city government now being carried out by the Minneapolis Survey Commission.

Professor Leonard D. White, of the University of Chicago, is spending part of the summer abroad completing his study of the Whitley system in the British civil service. Professor White has lately been elected a member of the board of trustees of the Bureau of Public Personnel Administration.

Dr. William C. Casey, formerly of the University of Illinois, has been appointed associate professor of political science at the University of Chicago. Dr. Istar A. Haupt and Mr. Fred Telford, both of the Bureau of Public Personnel Administration, have been appointed lecturers in the political science department at the same institution.

Professor J. R. Hayden, of the University of Michigan, will spend the coming year in the Far East completing his study of Philippine political institutions and observing political conditions in China and Japan. His work will be carried on with assistance from the Faculty Research Fund of the University of Michigan.

Dr. Howard B. Calderwood, Jr., and Mr. Lawrence Preuss, instructors in political science at the University of Michigan, will be on leave during the coming academic year and will study in Europe. Their

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places will be taken by Dr. H. A. Steiner, formerly of the University of California, and Mr. Earl E. Warner, formerly of Ohio State University.

Professor Chester Lloyd Jones, of the University of Wisconsin, is spending the summer in Mexico and has recently conducted a seminar in connection with an institute at Mexico City.

Professor William H. George, of the University of Washington, has resigned to accept the deanship of the college of liberal arts at the University of Hawaii.

At New York University, Dr. Edward C. Smith has been promoted from associate professor to professor of political science, and Dr. Arnold J. Zurcher from instructor to assistant professor.

Professor Joseph P. Harris, of the University of Wisconsin, has accepted a full professorship of political science at the University of Washington.

Professor Frank M. Stewart, of the University of Texas, will be acting professor of political science during the coming year at the University of California at Los Angeles.

Professor Lane W. Lancaster has resigned at Wesleyan University in order to accept a professorship of political science at the University of Nebraska.

Dr. Clarence A. Berdahl has been advanced to a full professorship at the University of Illinois.

Dr. Guy S. Claire, of Stanford University, has been appointed assistant professor of political science at Oregon State College.

Professor T. S. Barclay, of Stanford University, served as a member of the political science staff at the University of Missouri during the summer session.

Mr. Clyde P. Snider, of the University of Kansas, has accepted an instructorship in political science at Indiana University.

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Dr. Ralph E. Page, having completed his graduate work at Syracuse University, has accepted an instructorship in political science at Bucknell University. He will give courses in public administration and public law.

Professor Charles S. Hyneman, who has resigned at Syracuse University to accept an asistant professorship at the University of Illinois, gave summer session courses at Indiana University in substitution for Professor Amos S. Hershey. His successor at Syracuse is Dr. Spencer D. Parratt.

After a year as an instructor at Harvard University, Dr. Ernest S. Griffith returns to Syracuse University as a member of the staff of the School of Citizenship and Public Affairs and junior dean of the University.

Dr. Dorothy Schaffter, associate in the department of political science at the State University of Iowa, has accepted appointment as associate professor of political science at Vassar College.

The department of political science at Ohio State University is sponsoring the formation of an Ohio League of Municipalities. A meeting was held at the University on June 20 for the purpose of forming a temporary organization.

Dr. Harvey Walker, of the department of political science of Ohio State University, served as a member of the teaching staff of the third annual short course on citizenship and public administration at the University of Southern California.

Dr. John T. Salter, formerly of the University of Pennsylvania, and more recently of the University of Oklahoma, has accepted an associate professorship of political science at the University of Wisconsin. Mr. John D. Lewis, graduate assistant, has been appointed instructor in political science at the same institution.

Dr. Peter H. Odegard, of Williams College, has accepted an appointment as professor of political science at Ohio State University. His place at Williams will be taken by Dr. Charles Fairman, formerly of Harvard University.

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Dr. Joseph R. Starr, instructor in political science at the University of Minnesota, will spend the coming year in England, where he will make a study of the educational and research activities of British political parties, particularly the Liberal party.

Mr. Elmer E. Hilpert, of the department of political science at the University of Minnesota, will serve as instructor in municipal government at Western Reserve University during the coming academic year.

Professor Frank W. Prescott, of the University of Chattanooga, is serving as executive secretary of a Tennessee state tax committee which is engaged upon an exhaustive study of local, county, and state tax problems.

Dr. John W. Manning, formerly instructor at the State University of Iowa, has been appointed associate professor of political science at the University of Kentucky.

Mr. William M. Hargrave, graduate assistant at the State University of Iowa in 1929-30, will be an instructor in political science at DePauw University during the coming academic year.

Professor Harold F. Gosnell, of the University of Chicago, is completing a study of precinct committeemen in Chicago. A similar study is being carried on in New York City by Dr. Roy V. Peel, of New York University.

Professor Oscar Jászi, of Oberlin College, is teaching at the University of Chicago during the second term of the summer quarter.

Mr. W. Fred Cottrell, who recently completed his work for the doctorate at Stanford University, has been appointed assistant professor of political science and sociology at Miami University.

Dr. J. A. C. Grant, of the University of Wisconsin, has accepted an assistant professorship of political science at the University of California at Los Angeles.

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Mr. Joseph Kallenbach has been appointed instructor in government at Iowa State College.

Professors F. G. Crawford, Maurice R. Scharff, and W. E. Mosher, of Syracuse University, are undertaking a survey of the control of utilities as exercised by public service and other commissions throughout the United States. It is proposed to include in the survey a critical analysis of the personnel and the functioning of the public service commission, and of its authority under the law, as these may be discovered in public reports and field investigations.

Professor Orren C. Hormell, of Bowdoin College, is expanding the study of public utility control abroad that was published as a part of the report of the legislative commission investigating the public service commissions law of New York State. The work is being carried on under the auspices of the School of Citizenship and Public Affairs of Syracuse University.

It has been announced that the Page Memorial School for International Relations, to be established at the Johns Hopkins University, will be placed under the direction of Mr. John V. A. MacMurray, former United States minister to China.

Under provisions of the will of the late Austin B. Fletcher, of New York, a Fletcher School of Law and Diplomacy will presently be opened at Tufts College. The object will be to train students for the foreign service and for the practice of international law.

In connection with the inauguration of Dr. William C. Dennis as president of Earlham College, an Institute of Polity was held at Richmond, Indiana, May 15-17. Among the speakers were Professor George G. Wilson, of Harvard University, Dr. James Brown Scott, president of the American Society of International Law, and Mr. Francis White, assistant secretary of state.

Courses in political science are being given in the summer session of Syracuse University by Professors William Anderson of the University of Minnesota, Walter Laves of Hamilton College, and W. Q. Dealey of Western Reserve University.

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Upon the resignation of Colonel C. O. Sherrill as city manager of Cincinnati, the city council chose as successor Mr. Clarence A. Dykstra, director of personnel and efficiency of the Los Angeles department of water and power and professor of political science at the University of California at Los Angeles. Mr. Dykstra served for some years as secretary of the Cleveland Civic League and of the Chicago and Los Angeles city clubs, and formerly taught at Ohio State University and the University of Kansas.

Historical investigation of the classification of crimes and the relation of such classification to penalties has been selected as the first project to be undertaken by the Foundation for Research in American Legal History, recently established at the Columbia Law School, under the directorship of Professor Julius Goebel, Jr. The second project will be a study of the development of chancery in America, including a study of colonial chancery courts and the growth of their unpopularity, and a study of the aims, methods, and accomplishments of the fusionists.

At a conference on governmental relationships, held at the University of Minnesota July 15-18, sessions were devoted to relationships in law enforcement, in the administration of public utilities, in public finance, and in public health administration. The forenoon sessions were devoted to formal addresses and the afternoon sessions to round-table discussions.

The fourth session of the Institute of Public Affairs at the University of Virginia was held August 3-16. Among round tables and leaders were: (1) the administration of public business, Professor Thomas H. Reed, of the University of Michigan; (2) business in government, Mr. Clarence A. Dykstra, city manager of Cincinnati; (3) our Latin American relations, Professor Clarence H. Haring, of Harvard University; and (4) reorganization of state government, Hon. Harry F. Byrd, ex-governor of Virginia.

The Seventh Institute of the Norman Wait Harris Memorial Foundation was held at the University of Chicago June 16-27. The general subject of the conference was the foreign policy of the United States. The lecturers included Yusuke Tsurumi, former member of the Jap-

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anese Parliament; George Young, former attaché in the British diplomatic service; Victor Andres Belaunde, professor of Latin American history, University of Miami; Percy Elwood Corbett, dean of the Law School, McGill University, Montreal, Canada; and George H. Blakeslee, professor of history and international relations, Clark University. In accordance with the usual plan of the Institute, a series of round-table meetings discussed various problems of American foreign policy. Some twenty-five specially invited scholars and publicists were in attendance.

The Local Community Research Committee of the University of Chicago has undergone an important reorganization. Membership on the Committee was formerly given to six departments and schools. Commencing July 1, the members are individual persons appointed by the president of the University for an annual term. In addition, there has been organized a University Social Science Research Council comprising fourteen representatives of as many departments and schools in the social science group. It is expected that a more highly integrated program of research in the social sciences will be developed by the newly organized Local Community Research Committee, the members of which for 1930-31 will be Professors Charles E. Merriam, Harry A. Millis, Edith Abbott, and Edward Sapir. In line with this program of reorganization, the Social Science Conference, a body which comprises the whole teaching and research staff in the social sciences, and numbering somewhat over one hundred, is expected to become more active. The chairman of the Conference for 1930-31 is Professor Leonard D. White, and the secretary, Professor Donald Slesinger. The Personality Committee of the Local Community Research Committee announces the appointment of Dr. Franz Alexander, the noted German psychiatrist, for 1930-31

Research fellowships in political science have been awarded as follows by the Social Science Research Council for the year 1930-31: James A. Maxwell, of Clark University, for a study of federal subsidies to the Canadian provinces since confederation; Samuel Dale Meyers, Jr., of Southern Methodist University, for a study of the Permanent Mandates Commission of the League of Nations, with special reference to its work in connection with the "A" mandates; John T. Salter, of the University of Oklahoma, for a study of the ward leader in relation

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to Republican organization in Philadelphia;[1] and Howard B. Calderwood, Jr., of the University of Michigan, for a study of the Secretariat of the League of Nations and of related international organs in their dealings with member governments. Mr. Eugene Staley, of the University of Chicago, was reappointed to a fellowship and will continue his study of international private investments as a factor in international relations. In all, the Committee on Research Fellowships considered 109 applications and made thirty awards, with stipends aggregating approximately $80,000. The closing date for applications for 1931-32 is December 1, 1930.

The Graduate School of the American University has approved the plan to establish and maintain a continuous current digest of official acts and other facts relating to the conduct of the foreign relations of the United States. Professor Ellery C. Stowell, of the department of international law, will direct the enterprise, with the coöperation of Professors Charles C. Tansill and Irvin Stewart. Competent assistants will keep in touch with the different branches of the government and visit the commissions and bureaus which deal with international affairs. Information so gathered will be multigraphed and mailed forthwith to those who desire to keep informed in regard to these questions. It is the purpose to place this service on a paying basis, but during an initial or trial period a nominal charge will be made merely to cover the actual cost of paper and postage—a deposit of $10.00 will suffice. At the end of six months or a year, the separate items will be assembled and published in a more permanent form. It is planned to extend the digest later to cover the whole field of the government's activities at Washington.

[1] In view of his recent appointment at the University of Wisconsin, Professor Salter's fellowship has been deferred a year.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

The Constitutional Law of the United States. Second Edition. By Westel Woodbury Willoughby. (New York: Baker, Voorhis and Company. 1929. Three volumes. Pp. lxxxiii, xvii, xvi, 2022.)

The appearance of the revised edition of Professor Willoughby's monumental treatise *On The Constitution* is an epoch-making event in the field of American constitutional law. The book originally appeared in 1910, the year which witnessed the publication of *Watson on the Constitution,* and Hall's little text on *Constitutional Law,* and has remained the most valuable treatise in the field. Two decades have seen much constitutional law made and remade, so that in settling himself to the task of revision the author faced an undertaking hardly less arduous than the preparation of the original work. This task he has perfomed in the most thoroughgoing manner. Many texts and treatises are revised by the process of changing sentences, adding paragraphs, and shovelling in citations to recent cases in footnotes or appendices. But Professor Willoughby has given us a genuine revision in the best sense of the word. The new work is about twice as large as the old. The original edition of two volumes, sixty-five chapters, and less than 1,400 pages has been replaced by three volumes with considerably larger pages, 105 chapters, and some 2,100 pages. More than twice as many cases are cited. Furthermore, the work of revision has been done by the author himself, which guarantees the accuracy, soundness of judgment, and richness of scholarship which the profession has learned to expect from him.

It is not surprising that a very considerable proportion of the new material has been devoted to the commerce clause and to the due process of law clause. The first edition treated due process of law in about twenty pages without specifically mentioning the police power, and disposed of equal protection of the laws in less than ten pages. We now have fifteen chapters, comprising about 275 pages. There is a substantial chapter devoted to freedom of speech, with an analysis of our various war-time abridgments of it, to replace the scant

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two pages in which it was previously mentioned. There is a marked enlargement of the treatment of the organization, jurisdiction, and powers of the federal courts.

One phase of the thoroughgoing treatment of the federal commerce power deserves special comment, since it represents a contribution not attempted in the earlier work. In addition to a discussion of the constitutional law of the subject as embodied in the decisions of the Supreme Court, the author has given us a résumé of the statutory exercise of the powers of Congress. This is an attempt, as he puts it in his preface, to show "the manner in which the Federal Government has exercised, and is now exercising, the constitutional powers vested in it. The increase during recent years of Federal regulation has been so great that, without a knowledge of this phase of Federal growth, a very inadequate comprehension will be gained of American constitutional jurisprudence in its present stage of development." Thus we are given an invaluable survey of the federal legislative policy toward such problems as railroad regulation and trust control, with a most serviceable study of the organization and work of the Interstate Commerce Commission, the Federal Trade Commission, and other administrative bodies performing analogous functions. The constitutional law surrounding the commerce clause is presented, not merely in terms of court decisions, but in terms of legislative action and in the actual exercise of administrative power.

In discussing the scope and arrangement of this work it may be pertinent to point out to the readers of the *Review* that Professor Willoughby, whose interests have lain in the field of political science, has retained and elaborated those portions of his previous work which deal with constitutional problems of interest to students of government and public affairs, but with which the practising lawyer is likely to have only the most infrequent contact. This includes the various chapters dealing with the power of the President, the organization and procedure of Congress, impeachment, the treaty-making power, and the like.

There has been no discernible change in the method and general plan which the author developed twenty years ago for the presentation of his material. The underlying purpose has been to deal with constitutional law in terms of general principles, so far as there are any, rather than to present a mere digest of cases, or to embark upon detailed and technical discussions of particular adjudications. To this

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end, the following method has been uniformly used. First, there is presented a brief and accurate statement of the holding of the Court in the leading cases bearing upon the problems under review. This is followed by fairly extensive and uniformly well-chosen excerpts from the opinion of the Court. When these cases have been thus summarized and the Court's general argument in support of its position has been presented in its own words, the author criticizes, synthesizes, and compares the doctrines enunciated, in an effort to bring out the essential principles of law and to evaluate them. These critical and analytical summaries are keenly and shrewdly done and constitute the most valuable portion of the work. If they are open to criticism at all, it is because they are too few in number and because we may well wish that they were more extensive in scope. The usefulness of this technique is enhanced by the satisfactory arrangement of topics and by the elaborate analytical table of contents and index which enable the reader to run down an elusive point with the minimum of effort. While the method used has perhaps made the book less useful to the practitioner of law than it might have been had it utilized to a greater extent the method of the digest or the law review, it certainly provides the lawyer with the broad background of principles upon which his more detailed quest for authorities and his more refined discrimination of particular cases and holdings must rest. It is the present reviewer's belief that by the use of the method he has employed Professor Willoughby has served the greatest convenience of the greatest number.

Every reader or user of *Willoughby on the Constitution* will probably find some occasion to lament that its author did not have more space to devote to this or that topic of special interest to himself. But he must at the same time recognize that a comprehensive treatise must maintain a reasonable balance both of space and emphasis, and there can be no doubt that Professor Willoughby has succeeded admirably in doing this. Also every reader will be likely to find some point or points upon which he either disagrees with the author's conclusions or would prefer to see them stated in some modified way. Such disagreements are not only inevitable, but they are useful in tending to produce the clarification of issues through the clash of opinion. The only adverse criticism which the present reviewer feels like urging, and it is a minor one, is directed against the bibliographical apparatus with which the work is equipped. This is considerably more

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extensive than in the former edition, but is far from satisfactory. Books and monographs are cited with some thoroughness, and a certain amount of review material is also included. But this latter is not very systematically assembled, and many significant titles are omitted altogether. The inclusion of certain references leads one to wonder at the omission of certain others and to speculate as to the plan in accordance with which the selection was made. Perhaps this is merely another way of saying that we sadly need a thorough classified bibliography of constitutional law, that this was an opportunity to provide one, and that Professor Willoughby did not see fit to undertake such a colossal task. Such a suggestion has no bearing upon the fact that Professor Willoughby has made a contribution to the field of constitutional law the importance and value of which it would be difficult to exaggerate.

ROBERT E. CUSHMAN.

Cornell University.

On the Commonwealth, by Marcus Tullius Cicero. Translated with notes and an introduction. By GEORGE HOLLAND SABINE and STANLEY BARNEY SMITH. (Columbus, Ohio: Ohio State University Press. 1929. Pp. ix, 276.)

American classical scholars in recent years have been doing work of the highest interest and value to political scientists. More and more attention is being given by classical scholarship today, especially in this country, to constitutional and legal subjects, and the publications of Abbot, Botsford, Ferguson, Frank, Boak, Bonner, A. C. Johnson, Calhoun, Goodenough, and others have made available a rich mine of materials for students of politics who are interested in the growth, transformation, and workings of governmental and legal institutions. The varied political experience of the Græco-Roman world is at last beginning to be laid bare with sufficient thoroughness and detail to supply a sound basis for analysis, and for more adequate and considered comparison with modern developments, than has heretofore been possible. It is time that this body of material should be more widely exploited.

The present translation of Cicero's *Republic,* accompanied by an ample and scholarly introduction and notes, is of special interest. It is a happy instance of collaboration between Professor Smith, who is primarily a classical scholar, and Professor Sabine, whose well-

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known work on the border-line between philosophy and political thought has won him distinguished standing in the guild of political scientists. Together they have produced a book of sound scholarship which should find readers among all students of American government who view their task as something other than purely descriptive reporting.

The significance of Cicero's *Republic* for the study of American institutions rests in the fact that it is the classical fountain-head of that special blending of the two conceptions of "mixed government" and "natural" or "higher" law which had to await the American Constitution to find its full embodiment in practice. The *Republic* disappeared in the earlier Middle Ages, and remained a lost work until resurrected by Cardinal Mai from the solitary Vatican palimpsest in 1822; so that it had no direct influence on political thought during the formative era of the sixteenth and seventeenth centuries. The ideas which it incorporates had, however, passed long before into the stream of political commonplaces. The doctrine of mixed government was revived with special force at the commencement of the sixteenth century through Machiavelli's borrowings from Polybius; and in the eighteenth century John Adams made himself its hierophant and protagonist. This doctrine of balance—balance between the three primary forms of government, balance between social classes, and balance between governmental organs—tinctures all the thinking of our American constitutional fathers, and from them has passed into the current of conventional ideas which are repeated as axiomatic truths in elementary text-books and high-school orations.

The *Republic* more clearly than any other document lays bare what was in the minds of the classical thinkers who invented the doctrine of mixed government. The chief malady of the ancient city-state, as of its mediæval successors, was frequent change in the form of government, accomplished by violent revolution. These violent changes were seen to be connected with the fact that governments were often guilty of excess, and that this excess usually took the form of carrying too far the principle which the government embodied. This authority, which was the principle of the monarchical form of government, was carried to the point of tyranny; liberty, which was the principle of democratic government, tended to degenerate into mob-rule and anarchy. Plato originated the idea that this tendency of a "simple" form of government to excessive application of its "principle" could

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be corrected by merely coupling it with its opposite. Thus by combining monarchy with democracy, the liberty which was the principle of the latter would restrain the authority which was the principle of the former, and so the tendency toward either tyranny or anarchy would be effectually checked.

This neat and plausible paper scheme, hinted by Plato and touched into greater detail (with an important change of direction) by Aristotle, was elaborated by Polybius and illustrated by its supposed embodiment in the actual constitution of the Roman republic. Polybius's picture of the Roman republic was to the age of Cicero what Montesquieu's picture of the English constitution was to the late eighteenth century; and Cicero, with that large eclectic habit of borrowing which was his forte, took it and embroidered it into the texture of the *Republic*. "The highest achievement of political wisdom," he tells us, "is to understand the cycle through which governments pass, that we may know the specific tendency of each, and thus be able to retard the movement or forestall it" (i. 24. 68). "Thus the simple forms of government degenerate easily into the corresponding perverted forms which are opposed to their respective virtues, tyranny arising from monarchy, oligarchy from aristocracy, and mob-rule from democracy; and, whereas the types themselves are often exchanged for a new type, this instability can hardly occur in the mixed and judiciously blended form of government except through great faults in its leaders" (i. 25. 69).

It is one of the ironies of the political thinking of practical statesmen that Cicero could have seen in a mixed constitution a guarantee against revolution barely a year before Caesar crossed the Rubicon. It speaks better for the logical subtlety of subsequent political philosophers than for their practical sagacity that they have continued to imagine that opposing forces could be harnessed together to supply effective government simply by virtue of their opposition, without the aid of some power behind the scenes. It remained for the late Henry Jones Ford to tell us what the Roman Senate at one epoch and Pompey and Caesar at another, what the Medici at Florence and the boss of any American city, could have disclosed as to the motive power and guiding influence in a checked and balanced government. And finally it seems odd that the hypothesis of "simple" forms of government, on which the whole logical argument for mixed government rests, has been able to stand so long in the face of the obvious fact that every

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civilized government, no matter how organized, is bound to include the three elements of officials with authority, a more or less permanent group of advisers, and channels for the expression of popular will. The real question is always whether these elements are to be organized for the purpose of coöperating or of opposing one another; and whether their opposition is to be heightened by making it reflect the antagonism of warring interests in the community.

The translators' introduction to the present volume gives distinctly the best and most thorough survey in English of the course of political philosophy in the period between Aristotle and Cicero—that period in which, as Carlyle has pointed out, there occurred the most significant shift of interests and change of direction in the whole history of the subject. This shift of interest, which is represented chiefly by the new emphasis laid on "natural law," is adequately referred by Sabine and Smith to the rise of empires and the submergence of city-states; it is worthy of comment that the doctrine of mixed government, which had been evolved specifically from the experience of the city-state, was carried over into the new epoch without any apparent consciousness that the problem of organizing the government of empire might include different factors from that of organizing the government of a city. The standing source of wonder about the political theory of eminently practical people like the Romans is that it bears such slight relation to the practical problems with which they are confronted, and rests so largely on conventional abstractions and idealized versions of the past.

It is natural to compare the Sabine and Smith translation with the recent version of Dr. Keyes of Columbia University (Loeb Classical Library, 1928). A cursory examination indicates that Dr. Keyes, in his desire to be literal, has not always succeeded in producing as fluent and idiomatic English as the present translators. Occasionally it has seemed to the reviewer that this greater literalness has better preserved the sense of the original. On the other hand, the present translators have constantly kept in view legal and philosophical implications which Dr. Keyes seems sometimes to have missed, as in the first passage from Nonius in iii. 7. But translation is so largely a matter, not merely of insight, but of taste, that no man is ever really content save with his own, and sometimes not with that; so that it is sufficient to say that Professors Sabine and Smith deserve gratitude

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for a version which political scientists can use with safety and comfort.

JOHN DICKINSON.

University of Pennsylvania Law School.

The Dominions and Diplomacy. By A. GORDON DEWEY. (New York: Longmans, Green & Co. 1929. Two voumes. Pp. i-v, 375; vi-xi, 397.)

A Short History of British Expansion. By JAMES A. WILLIAMSON. (New York: Macmillan Co. 1930. Two volumes. Pp. xxiii, 470; xvii, 315.

The Apologia of an Imperialist: Forty Years of Empire Policy. By W. A. S. HEWINS. (London: Constable & Co. 1930. Pp. xxiv, 357.)

The anomalous and strange in government possesses irresistible attractiveness. Where in the political manifestations of mankind can stranger, more significant, paradox be found than in the present status of the British Empire? Thus, following hard upon works by Keith, Hughes, and others come these three studies, in which there is little duplication.

Dewey's work is the most important, in the sense that it brings together and interprets more new and significant material. The title is a little unfortunate, for the book covers (albeit largely from the Canadian angle) the entire political development of "dominion status" and is by no means confined to the "external relations" of the various constituent parts of the British Commonwealth of Nations. Thus imperial federation and imperial organization receive attention equal to that given to commercial treaties, defense, post-war settlements, and the League of Nations.

The advance of Dewey over Keith's monumental works lies in his approach—realistic rather than legal. Keith studies laws and precedents; Dewey pins his faith to trends and movements in public opinion. For example, Laurier and his school of thought as the motivating force in Canadian nationalism are seen as the provincial impetus back of many legal precedents.

"Although these problems had for a generation been the matters of controversy within an interested circle, they now assumed the front stage with every appearance of novelty. . . . . But the ground upon which settlements were to be based had already been prepared. It

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is only by delving back into the earlier history of the question that one comes to realize how little there has been that is really new in post-war discussions of Imperial foreign relationships; how much has been merely . . . . application . . . . of principles . . . . already in operation as regards other phases of the Britannic Question." This thesis is developed so effectively as apparently to dispose of the myth that the transition from colony to dominion was in the nature of concessions reluctantly extended by the mother country under pressure—at least as regards Canada.

One of the most useful features of the book to the general reader is its clear analysis of the various schools of thought—colonialist, nationalist, imperialist, coöperationist, continentalist—influential in Empire evolution. To the author, the hope for the future lies with the coöperationists. Yet, reluctantly, the admission is made that, after all, the Empire may break up on any of a number of issues of foreign policy—for nationalism rather than imperialism seems apparently to have won a permanent ascendancy in the various units. Coöperation compatible with nationalism may not be sufficiently strong to lead to any major sacrifice of individual interests, for the past has seen the average dominion preoccupied with internal affairs to the virtual exclusion of empire or world politics.

The book proceeds at a leisurely pace. Curiously, the introductions to each of the several topics appear much better done than the concluding paragraphs. The author frankly admits as a deliberate major limitation of the work the absence of any analysis of economic as distinct from political factors. Furthermore, while he is fully justified in emphasizing the part played by Canada as regards pre-war days in the movement away from colonialism, it is doubtful whether his claim is quite so justified in recent years. Probably as great or greater credit belongs to the Irish Free State, or even the Union of South Africa, in the case of post-war changes such as the concept of the office of governor-general, the rôle of the Privy Council in judicial appeals, independent action in world councils, sovereignty in mandated territory, or even the right of secession.

The new edition of Williamson's book represents an extensive revision, and brings his earlier work down to the Imperial Conference of 1926. It is a political and military history of the old type, with negligible attention to analysis of economic and social forces. It attempts to some extent an encyclopædic treatment of the several

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colonies and dominions, and for this very reason suffers from a certain want of perspective. Instances such as the ready acceptance of the "politician" legend concerning Disraeli betray an uncritical attitude toward historical material, while the truly prophetic and statesman-like policy of Disraeli's colonial policy is largely missed. None the less, the volume is of considerable interest, and the story of India in particular makes the book worth owning for those interested in historic backgrounds.

The memoirs of Professor Hewins are faithful to his opening sentence: "The key to the political developments of the last forty years is to be found in economic policy." As such, they may usefully be taken in conjunction with the political aspect of Commonwealth development stressed by Dewey. Hewins, perhaps best known in America as co-founder and first director of the London School of Economics, has evidently played an influential part in moulding the views and policy of such imperialists as Chamberlain and Balfour. The importance of his book will depend largely upon the extent to which his panacea of imperial preference actually succeeds in obtaining general acceptance. If, as is possible, the recent stirrings in this direction in England mature, then this record of so much of the earlier inner history of the movement will become genuinely important. If not, it may still be of interest in its incidental revelations of the inner workings of the British parliamentary system.

How then fares the Empire? No one can read far into recent developments without appreciating how fast certain tendencies would seem to set pace in the direction of a nebulous confederacy, a mere personal union, analogous to that between Denmark and Iceland, or the former unions of Sweden and Norway, likely to break up or to lose one or more of its parts at the first really important crisis of diverging interests. Yet this surface view may not be the last word. Cementation for mutual defense may be passing as a large factor; even mutual economic advantages may prove illusory; certainly mere legal bonds can no longer be depended upon. There remain sentiment and mutual devotion to a cause. The supreme ideal of the Empire today is that it should be an association of equals with a common loyalty, coupling this with the progressive development of backward peoples to a similar equal status. What is this "common loyalty?" It is with these nations what the Greek ideal has been to the individual. Just as the Greeks believed, not only in the full and free development of

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each individual, but also that the highest form of this development was to be found in his associations actively within his city, so likewise the neo-imperialist of the British Empire believes in the full and free development of its constituent parts, with each part finding the highest expression of this development in the associative activity with other parts of the Empire. But this is an ideal for a confederation of humanity, and perhaps, after all, it is a race between the disintegration of the Empire and the common fusion of its states in a developed League of Nations.

ERNEST S. GRIFFITH.

Syracuse University.

Lord Durham. BY CHESTER W. NEW. (Oxford: The Clarendon Press. 1929. Pp. xxiv, 612.)

This is in all respects the best biography of Durham. It is less discursive than Stuart J. Reid's two-volume work of twenty-two years ago, besides being written with more discrimination and incorporating much new material. Dr. New tells us that his text has been written for that phantom fellow "the general reader," while the serious student of history can regale himself on the footnotes if he so desires. That would seem at first glance to be a rather jug-handled apportionment; but the reader of the book, whatever his affiliation, will soon find that there has been no sacrifice of sound scholarship to alluring rhetoric, no straining after epigrams at the expense of sober facts, no hero-worshipping and on the other hand no glossing of human frailties and serious flaws in character or conduct. Dr. New's conception of a biographer's task has been to set the stage and then to let the principal figure speak and act his own part without any posthumous promptings. Hence he has described fully, and to some extent interpreted; but he has not sought to argue, defend, or justify. Durham was a good statesman with a bad temper. He had sound ideas and used unsound methods. He was at times more sensitive than sensible. Combining vision with vanity, he was in trouble and out of it with almost clock-like precision, so that few historical personages make heavier demands upon a biographer's neutrality than does this stormy petrel of the tremulous thirties who marred a career to make a nation.

The high points in Durham's life-story are known to all who have followed, even casually, the evolution of colonial autonomy. He is the outstanding figure in that movement. His renowned *Report* is the

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basis of the political philosophy (if such it can be called) on which the British Commonwealth of Nations is standing today. But even students of colonial history have not always appreciated the fact that Durham rendered political services of great and enduring value before he went on his mission to Canada. Dr. New devotes three hundred pages, more than half his book, to this phase of the great pro-consul's career. Durham was associated during these years with reformers of all varieties, and his liberalism was of the militant type. In the bloodless revolution of 1832 he had a part of greater importance than historians of the reform era have apportioned to him. The author of this biography has endeavored, and with success, to set that injustice right.

As for the hectic mission to Canada, there is nothing very startling brought out in Dr. New's book. The story, in its essentials, is as it has heretofore been told. There is some new material drawn from the Lambton manuscripts and a good many fresh suggestions as to motives or objectives. The temper in which the quick-moving events of 1837-38 are described is conspicuously fair. Durham emerges with a rather battered halo, but no one who reads this book can fail in friendly feeling toward one who, with all his spells of pettiness and impatience, embodied nevertheless a high measure of courage, liberalism, and devotion to ideals which the world has now exalted as its own.

Dr. New has done an excellent piece of work, and the fraternity of Canadian historical scholars may well set him down as one who is headed toward the top. The mechanism of the book, moreover, reflects the highest credit on the Clarendon Press. In typography and binding it is all that a good book ought to be. Incidentally the volume includes an appendix with a discussion of the mooted question whether Durham wrote all of the *Report* himself, and there is also a comprehensive bibliography of both manuscript and printed materials.

WILLIAM B. MUNRO.

Pasadena, California.

Report of the Royal Commission on the Constitution. (Canberra: H. J. Green, Government Printer. 1929. Pp. xxiii, 371.)

The Royal Commission Report on the Constitution of the Commonwealth of Australia is an important government document. It embodies results of a systematic attempt on the part of a non-political commission of seven members to inquire into the powers of the Com-

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monwealth under the constitution, and also the workings of the constitution since federation.

The primary aim of the commission was to investigate ten main subjects[1] to determine their effectiveness from a constitutional point of view, and to recommend alteration of any unsatisfactory provisions. Much of the evidence obtained through examination of witnesses (Commonwealth and state officials as well as other informed citizens) is of a substantial nature, having been carefully prepared by experts in many instances.[2] In writing its report, the commission has gone far beyond the several subjects suggested for study, and has presented a concise commentary on the constitution of the Australian Commonwealth throughout its three decades of existence.

General recommendations favor retention of the federal form of government [which form possesses elements and institutions common to the constitutions of Canada, Australia, and the United States (p. 228)]. Specific recommendations on some thirty subjects are varied in nature. About half favor an extension in the exercise of Commonwealth authority (especially legislative), whereas the remainder express preference for present constitutional provisions or their explicit deletion. In the latter group appears a recommendation on the extremely controversial subject of industrial matters. Members of the commission declare that "industrial legislation should be regarded as a function of the states" (p. 248), and that Commonwealth control over conciliation and arbitration should be withdrawn; for "the parliament which deals with industrial arbitration and conciliation should be the parliament which has control of industrial matters generally" (p. 248). It would seem doubtful that execution of this recommendation offers an ultimate solution of existing deficiencies in the unique Australian system for dealing with industrial disputes.

Recommendations relative to taxation (pp. 259-260) are noteworthy, for if effected they would endow the Commonwealth parliament with legislative authority to deal with "taxation by two or more states of the same property so as to regulate or prevent double taxation;" to limit state tax discrimination against persons domiciled in other

[1] Aviation, company law, health, industrial powers, interstate commission, judicial power, navigation law, new states, taxation, trade and commerce (p. 1).

[2] The Minutes of Evidence contains testimony of 339 witnesses. It is printed in five parts (pp. 1736) with an alphabetical list of witnesses and an index of subject matter (Part 5, pp. 1723-1736).

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states; and to allow states to levy excise taxes on goods "which are not for the time being the subject of customs and duties." The latter feature aims to bolster state finances, and suggests at the same time that state-commonwealth financial relations are not finally settled.

But if the commission had failed to make a single recommendation, it is submitted that the *Report* would still be of value. In fact, the early pages are a real contribution to the story of Australian constitutional development. Part I is essentially a concise analysis of the relationships between states and Commonwealth with respect to more important governmental functions. Among those considered are: division of governmental power; legislative powers of the Commonwealth and the states; judiciary; external affairs; defense; taxation; industrial powers; health; coöperation between the states and the commonwealth; and financial relations.

With this array of material, the commission measurably brings up to date constitutional and extra-constitutional developments in "the Australian experiment with federalism," and offers an excellent point of departure for a thorough study of constitutional and administrative problems peculiar to the Australian federal system. The subject merits further research.

KENNETH C. WARNER.

Washington, D. C.

How Britain is Governed: A Critical Analysis of Modern Developments in the British System of Government. By RAMSAY MUIR. (New York: Richard R. Smith Inc. 1930. Pp. xii, 333.)

From Chartism to Labourism: Historical Sketches of the English Working Class Movement. By TH. ROTHSTEIN. (New York: International Publishers. 1930. Pp. vii, 365.)

Mr. Muir's book is not a description of the government of Great Britain; it is a discussion of contemporary defects in the working of the English parliamentary system. As such, it is invaluable. That is to say, the person who approaches the study of the English government through the pages of Lowell, Masterman, Munro, Ogg, or any other descriptive survey, needs this book of Muir's to call his attention to important aspects of the way in which that government works.

Muir starts by explaining how the civil servants have tended to become not merely dominant in their departments but over-influential

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in legislation. He shows how the recent emphasis on party cohesion has made the House of Commons helpless in the face of the cabinet, and the overworked cabinet impotent to supervise the administration. He analyzes the electoral system and gives strong arguments for the retention of three parties and the introduction of proportional representation. He makes a number of valuable, if not startling, suggestions for governmental reorganization.

It is easy for the reader to see that Muir's book results partly from the author's experiences as an active leader of the Liberal party (in which he now holds high place), and that the Liberal party would be particularly benefited if his suggestions were adopted. Nevertheless, both his cheerless analysis of existing conditions and his moderate suggestions for improvement have a validity much greater than that of party propaganda. Many American students of the English government have wondered whether that government is really as admirable as it sounds. Whether or not it is working as badly as Mr. Muir thinks, we can hope that its development in the immediate future will be consistent with Mr. Muir's proposals.

Mr. Rothstein's book is confessed propaganda for left-wing socialism. The author, a Russian now working for his home government in Russia, was for many years a resident of England and a journalist. In this book he traces the history of English working class agitation from the beginnings of Chartism down to the war of 1914. His avowed purpose is to show the futility of "bourgeois radicalism" (in which he includes all non-revolutionary socialism) and the necessity of "proletarian class-consciousness." His readers must not be surprised to find that the book is well-organized, well-planned, makes very good reading, and is usefully informative.

E. P. CHASE.

Lafayette College.

Capital and Labor Under Fascism. By CARMEN HAIDER (New York: Columbia University Press. 1930. Pp. 296.)

Labor and Capital in National Politics. By HARWOOD LAWRENCE CHILDS. (Columbus: The Ohio State University Press. 1930. Pp. 286.)

Taken together, these books point to a question of interest both to the philosopher and to the politician. What is the proper relationship

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between forces economic and governmental? The place of the group in the state is the basic problem in both studies. Italy has faced the issue. The Fascists have erected a representative system upon a foundation of syndicates. Since only Fascist organizations are recognized, however, the result is the practical synthesis of party and government. The democratic state, still clinging to the individualistic strictures of nineteenth-century liberalism, has ignored the group except for purposes of official fulmination or private convenience. Associations in this country have been forced to hit upon some *modus operandi* which will achieve their ends and not unduly irritate the authorities. Two extreme positions are thus presented: on the one hand, an organic state wherein groups are integers and individuals nothing; on the other hand, a state that in theory neglects the interests binding men together and looks directly to the citizen and voter.

The book under review, while largely descriptive and mainly preoccupied with existing conditions, suggests some implications of importance to theories of the state. To the wise saws of abstruse hypotheses, modern instances of what is transpiring may be added from these volumes. Both elements are of value to the theorist. This is not a recommendation of pragmatic criteria: the specious ignoring of values through a rationalization of the status quo for convenience's sake is futile. Declaring an arrangement workable, and therefore right, implies the approval, even if unwittingly, of a norm of practicality. Certainly one should proceed with caution in making any such test of the theories of fascism; for dictatorship, causing a distortion between profession and action, introduces a stubborn imponderable—anti-intellectual, arbitrary, and opportunistic.

Since under the Fascists, the power of the state transcends all else, the government reserves to itself the right to intervene alike in labor disputes and in the direct management of commercial and industrial enterprise. In practice, the representative system based upon Fascist syndicates of employers and of employees functioning through national corporations amounts to little. "It is true that the conception of the corporate state calls for an economic chamber, and that the Fascists declare that they are working towards such a system, but at present Parliament is political, even according to the Fascists, and furthermore the idea of the corporate state, as it is advanced by the Fascists, does not take account of the existence and predominating position of the Grand Council" (p. 266). In fact, the Italian Parliament, syndicate

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structure *et al,* has so little power that "no inconvenience would result from its elimination."

Dr. Haider has selected a very revealing aspect of Fascist activity and has produced a valuable study, clearly, carefully, and thoughtfully presented. The subject is an excellent counterpoise to that of Professor Childs, who has produced an equally able piece of work. Both books demonstrate the fact that the processes of government are not confined to the institutions labeled political but also manifest their power through various agencies of social control.

In this country, as Mr. Childs points out, "economic groups are playing an important part in the current problem of adjusting a more or less rigid constitutional structure to a kaleidoscopic economic and social environment." The author selects the Chamber of Commerce of the United States and the American Federation of Labor for detailed consideration, in order to demonstrate the political aspects involved.

After a detailed analysis of these organizations and their part in national politics, Mr. Childs comes to the conclusion that "in fact it is the group agency which is making democracy work; for without it the cumbersome processes of democratic procedure would break down under the stress of rapidly changing problems and the insistence of numberless individual interests. The central government would lose touch with the people, and amid misunderstandings and turmoil futile attempts would be made to reconcile governmental regulation with individual initiative" (p. 248). Such an estimate seems somewhat to exaggerate the importance of these organizations, particularly when one considers the internal difficulties which the author depicts. The A. F. of L. and the Chamber of Commerce find it necessary to exert constant and active efforts to recruit and hold their supporters. Continuous endeavor is required if the membership is to be kept interested and group-conscious. Moreover, examination reveals the essential dependence of the organizations upon the state for the realization of their respective aims. There is little encouragement for the pluralists here. In neither Italy nor the United States do our authors find the group surpassing the state in the allegiance of the individual. Still the need is suggested in discovering for organized groups a definite sphere within which their great potentialities may be better realized. The Fascists, while granting the form, deny them the substance. In this country, official disregard by the government is linked with in-

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formal connivance and coöperation by legislators and administrative officers. Both situations leave much to be desired.

E. PENDLETON HERRING.

Harvard University.

Town Government in Massachusetts: 1620-1930. By JOHN FAIRFIELD SLY. (Cambridge: Harvard University Press. 1930. Pp. viii, 244.)

The author has made a distinct and valuable contribution in the field of local government and institutional development. The Massachusetts town—its origin and early history—has been so thoroughly covered by the scholarly pens of such historians as Jared Sparks, Edward A. Freeman, Herbert B. Adams, and Edward Channing that a less courageous author than Dr. Sly might have been deterred from entering the field. The author, however, has not produced just another history of the Massachusetts town, even though the first five chapters, comprising more than half of the book, are devoted mainly to an historical survey of the government of Massachusetts towns. The point of view of the author is that of a political scientist making use of the historical survey to place in its proper perspective the government of the present-day town, and to depict "the steady, and continuous unfolding of a local institutional pattern." The second half of the book (Chaps. VI-IX) is occupied with the "description and analysis of those present-day adjustments through which perplexed communities aim to regulate the rapid and often extreme transitions that are a phenomenon of modern life" (p. vii). This realistic approach, the author suggests, "tends to minimize the strictly historical and philosophic, and places main reliance on, first, description—the delineation of legal and structural features—and second, a pragmatic analysis—the justification of existing practices by their consequences, and their improvement through experience" (p. 226). The author has rather skilfully combined historical perspective, philosophical insight, and pragmatic analysis in presenting the Massachusetts town as a "going concern."

Chapters I and II trace the beginning and development of the town meeting and other agencies of town government through the town records of the seventeenth century. Chapter III sets forth a concise and all too brief criticism of the "medley of theories" relating to the origin of the Massachusetts town. After presenting the "Germanic theory," the "parish theory," the "primordial cells theory," the

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"Massachusetts charter theory," etc., the author seems to agree with Professor Edward Channing "that the towns were based on no models whatever, but grew by the exercise of English common sense, combined with the circumstances of the place" (p. 225).

Chapter IV traces the development of the town to the end of the colonial period, while Chapter V, "The Old Town and the New Social Order," marks rather a transition from the historical to the pragmatic approach. In the latter chapter the author barely touches upon the interesting field of relations between the state agencies and the towns.

Chapter VI is primarily descriptive, setting forth in detail the organization and operation of the "town meeting government," and its defects amid the complexities confronting large urban populations. The author concludes that "whatever may be the advantages of direct democracy in smaller communities, larger places are finding the old town meeting impossible" (p. 165).

Chapters VII and VIII present modifications and reforms tending to eliminate some of the faults of the original town-meeting government without relinquishing an institution so ancient and so intimately connected with the customs and aspirations of the people. The limited or representative town meeting, first instituted in Brookline in 1915, and later adopted by at least fourteen other towns, is devised to retain the substance of local democracy and to substitute a moderately sized deliberative assembly for the miscellaneous mass which crowds into a town hall. The author reports that the experiment, on the whole, has not been a failure, although it has failed to shorten the "long ballot," has tended to strengthen political party organizations, and "does leave the administrative problems of the community untouched" (p. 189).

Chapter VIII, "Improving the Administration," lays stress on the experiment with the town-manager system, and the significance of the finance committee. The author shows that "it is the town meeting that makes the manager plan somewhat of an anomaly in political practice." Nevertheless, he concludes that "on the whole, the town manager has justified the hopes of his proponents and has not only brought an increased precision and economy to the 'pick and shovel' activities of his town, but a valuable directive force in the wider fields of community planning" (p. 204).

The last chapter, "Past and Present," sums up the author's political philosophy in its relation to the Massachusetts town. He explains that it has been his purpose "to show the possibilities for institutional re-

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search that lie hidden in these materials [town records], to analyze the motives and methods in which local communities of the commonwealth are grounded, and to indicate the pressure that increased numbers and administrative complexities have brought to the simple machinery of another day."

The author not only has contributed an interesting volume on an interesting subject in political science, but has pointed, in a stimulating manner, the way to further research in local institutional development.

ORREN C. HORMELL.

Bowdoin College.

The Government and Administration of the District of Columbia: Suggestions for Change. By LAURENCE F. SCHMECKEBIER and W. F. WILLOUGHBY. (Washington: The Brookings Institution. 1929. Pp. xi, 187.)

This is a supplement to a study on the government of the District of Columbia, published by the Institute of Government Research in 1928, which presented a somewhat detailed description of the complicated machinery for the management of local public affairs in the national capital. This descriptive study indicated the need for some simplification and improvements in the system; and the present work presents a critical analysis and proposes a series of changes for bettering the situation.

Changes proposed deal, on the one hand, with a readjustment of the relations between the district government and the national government, and, on the other hand, with a reorganization of the machinery of district government. Those of the first group involve the transfer to the district government of a series of activities now performed by general agencies of the national government, including, among others, police and traffic control, prosecution of local offenses, and the administration of parks, water supply, and the Central Market. Certain activities, however, are to continue in the hands of national agencies, such as the civil service and other matters, some to be conducted on a contractual basis. Readjustments are proposed in relation to the budget system, the receipt, disbursement, and custody of funds, and financial control.

Proposals for the reorganization of the district government include the creation of a new legislative council, a manager in control of administrative functions, and a departmental regrouping of administrative services. The legislative council is to consist of five members ap-

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pointed by the President and Senate, with the chairman of the Senate and House committees on the District of Columbia. Special attention is given to plans for departments of law enforcement, finance, and education, the latter to include an advisory educational and library council, and for a unitary district court distinct from the United States district court. Other departments proposed are for public health and safety, public works, parks and property, and public welfare. One chapter deals with the improvement of the personnel system, and another with the reform of taxation.

These proposed changes are in line with the general tendencies of recent years in state and city reorganization, and should bring about greater efficiency in the conduct of public business and reduce the friction of the existing cumbersome arrangements. No attempt is made, however, to discuss proposals for granting voting rights to the inhabitants of the district or the contributions of the national government toward local expenditures.

JOHN A. FAIRLIE.

University of Illinois.

City Planning. 2nd edition. Edited BY JOHN NOLEN. (New York: D. Appleton and Company. 1929. Pp. xx, 513.)

Our Cities Today and Tomorrow. BY THEODORA KIMBALL HUBBARD and HENRY V. HUBBARD. (Harvard University Press. 1929. Pp. 389.)

More and more people flock to the cities. Our cities grow and extend in height and in complexity, but rapid growth has brought with it a full quota of growing pains. To ease these pains, a new art and science of planning has been developed. When the pains of growth in a raw, new country were first felt by the general public, the outstanding trouble seemed to be lack of beauty, magnificence, and space in our cities. A demand for parks, civic centers, and the "city beautiful" resulted, with architects and landscape architects taking the leading part in suggesting improvements and organization. Thus the public came to realize the existence of an art of city building.

But there were other growing pains—traffic and transit, railroads, and industry—that required a scientific as well as an aesthetic understanding if they were to be overcome. Engineers, statisticians, lawyers, real estate operators, were involved. They turned to past experience

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for help, and American cities were urged to follow the example of this or that great city of Europe. Later, with more analysis of the problems involved, new methods were found, and the process came to be known as the science of city planning.

The two books under review mark further steps in the development of both this art and science. The new edition of *City Planning* contains additional chapters on the more recent development of control over use of private land, on legislation, and on the extension of planning principles beyond the confines of any one political jurisdiction. The book is a collection of authoritative statements as to what the problems and growing pains are and how we can solve or obviate them. As in all cases of new editions, the reviewer wonders why more revisions are not made when the opportunity offers. Considering, for example, the vast amount of material published on this subject during the last fourteen years, one cannot help asking why the bibliographies accompanying each chapter remain as they were in 1916.

While the new edition of *City Planning* shows us what the problems and growing pains are, *Our Cities Today and Tomorrow* is a survey of how American cities are now meeting these problems. We no longer need complain that Mr. Nolen has not further modernized his book, because the Hubbards have brought together and concisely presented the most up-to-date information. The book reviews the present state of progress in the field, the problems which different cities have found most pressing, and the success or failure of the several methods tried by cities to meet these problems. The reader is assumed to have a general knowledge of the background of the field and to agree with the writers that the general purpose and methods of city planning need no argument to support them. In some chapters of the book there seems to be a tendency to assume that action is synonymous with progress.

Those interested in the organization of the community to cope with large, artistic, or scientific problems through use of experts will find in *Our Cities Today and Tomorrow* grounds for encouragement. The leaders of trade and civic organizations who want to help, but do not know where to take hold, will find how others have succeeded. The technician will find new tools and new supporting data for ideas he thought were all his own. But most of all, the book points out some of the weak places in the armor of the city planner. The Achilles heel of many a theory is exposed so that we may know where more research

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is needed. With research already organized and started in many universities, and with a new Graduate School of City Planning just established at Harvard, we can confidently look forward to the further advance of the art and science of city planning.

CHARLES E. ELIOT, 2ND.
National Park and Planning Commission
Washington, D.C.

The Recall of Public Officers: A Study of the Operation of the Recall in California. BY FREDERICK L. BIRD and FRANCES M. RYAN. (New York: The Macmillan Co. 1930. Pp. x, 403.)

Scholars are ever examining and attempting to evaluate contemporary social institutions, realizing, however, that final answers to the questions involved in any study cannot be found. Yet the studies are worth the effort, for light may thus be thrown on particular institutions, not only to indicate the more obvious conditions and needs, but to present as well a view of the entire social fabric. This is particularly true of the study of the recall in California made by Frederick L. Bird and Frances M. Ryan. The authors set out to examine one thing, the working of the recall for the twenty-five years of its use in the state of its origin. This developed into an exhaustive case study, the investigators searching for more than statistics and procedure, working to discover in addition "something of the underlying causes of recall movements, and to ascertain the way in which electorates respond to political emergencies evoked by recall campaigns" (p. vii). For the achievement of this objective they carried on an extensive personal research, examining pertinent documents, court records, and newspapers; interviewing innumerable public officials, proponents and opponents of recalls, prominent citizens in towns that had experienced recall campaigns, and others. As well, they prepared and mailed questionnaires to practically every political unit of the state. The result of this research is given us in their recently published findings on some two hundred cases of attempted recalls. But the result of this research is much more, for from this study we are given an intimate picture of the functioning of social institutions—the complex of forces that are constantly at work shaping this thing we call government.

The most significant part of the work is found in Chapters IV-VIII inclusive, covering 220 pages. In this portion of the study we are presented the cases, taken from 279 cities and towns, 58 counties, and

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numerous special districts. This is preceded by chapters introductory in character, dealing first with the general aspects of recall, then its adoption in California, and finally the law governing it. Following the case study proper comes a supplementary chapter that deals with the attitude of the courts in California toward recall, material that might well have been included in the preceding chapters. The work concludes with an admirable summary, a bibliography, and an appendix containing documents of special interest.

The operation of the recall has not produced "a democratic Utopia . . . ., neither has it led to the predicted political demoralization and chaos" (p. 342). Although it is in an early stage of development, it "has revealed great potentialities for civic betterment. . . . . The disquieting problems brought to light in the operation of the recall are mainly the general problems related to the functioning of all democratic government" (p. 362). It has been used with great moderation, being applied mostly to municipal officials. The fact that but three judicial officials above the rank of justice of the peace have been removed from office by recall, and that in each instance there was ample justification, makes the dire predictions of many eminent American jurists sound, on a re-reading of them, a bit foolish.

The recall has been most frequently exercised in order to remove "misrepresentative" officials, and the elections have been accompanied by a colorful spontaneity and popular enthusiasm almost unique today. "The advantages of the recall which are perhaps the most constructive and significant are too intangible for more than general comment and appraisal. It has permitted the lengthening of terms of office without the risk of the establishment of official bureaucracies. . . . . It has established the principle of responsibility and responsiveness, with a value limited only by the capacity of the public to understand it and benefit thereby. Finally, it serves a useful purpose in helping maintain public interest and confidence" (p. 353).

CHARLES AIKIN.

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Das Reich als Republik, 1918-1928. By AUGUST WINNIG. (Stuttgart and Berlin: Gotta. 1929. Pp. ix, 361.)

Das Reich als Republik is not, as might be supposed from its title, a description of the first ten years of Germany's experiences with the Weimar constitution. It is rather an exposition of the author's social

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philosophy, for which these experiences serve merely as illustrative material.

The discussion opens with the somewhat sententious statement: "Blood and earth are the destiny of peoples." Therefore, says Dr. Winnig, it is false to say of those who belong to another nation that they are men like ourselves. We cannot successfully copy other peoples except in superficial matters. "We can imitate their jazz-music and their boxing; but we cannot imitate their state." Neither the English, the French, the Italian, nor the Russian state can serve as a model for the German.

Although the older Germany did not have the republican idea, there was in the cities directly under the Reich a certain amount of republican reality. In the time of the Kaiser the important problem (so much in the background that it was scarcely seen, but rather felt by those of fine sensibilities) was: What system of state policy is best for the condition of the laboring classes? This is much more important than the question, Monarchy or Republic?

The Constitutional Assembly did not fairly face this question. It did not desire a socialistic state; it desired a democratic republic with as much provision for the social welfare as possible. "Socialization" was to the majority of its members a dangerous catchword, involving impossible demands. The National Assembly was a poor imitation of the Reichstag, with the same forms and faces, and the same ideas limited by partisan loyalties; so that it was obviously not an assembly of the nation, but an assembly of partisans. Finally, after many vicissitudes, the state survived under the Weimar constitution as the will of unintelligent mediocrity. No solution of the German question was found, either toward the right or toward the left. The problem was difficult because it meant establishing the control of the state in a period whose spirit struggled against control, and reorganizing as a political power a people who had become strongly influenced by the political institutions of hostile states. If a solution is found at all, it will be found in the future.

Germany has lost the spiritual leadership of the Western world. The life-forms of civilization are not shaped by her, but received from outside. Any German not born into them feels that they are foreign and bears within himself an opposition to them. There is thus in Germany an estrangement between the state and the nation. This situation can be saved only by facing the truly important questions—not the

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trivial and false one, Republic or Monarchy, but rather, independence or fresh entanglements. Opportunism or principle? Rights or duties? The present republic stands for peace, freedom, and comfort; the way of the new Germany will mean struggle, obedience, and sacrifice. The former means sickness, impotence, and ruin; the latter is the resurrection of the Reich.

Leadership among the Western nations has now passed to the United States of America, which is the clearest and strongest incarnation of the present world principle—that is, capital. America desires peace in Europe because she has investments everywhere and does not wish to see them endangered. Meanwhile, Germany is faced by a multitude of problems which can be solved only when the working classes actually secure control. The task which led to the breakdown of the Empire, and which has been assumed by the Republic, now stands imperatively before the oncoming generation.

So ends the author's argument. It is of a type which will appeal greatly to some minds, and will seem to others—perhaps to the majority of careful thinkers—inconsistent, illogical, and colored throughout by personal bias. The endeavour to concatenate a narrow belief in nationalism with the laboring-class point of view, which is ever leaning toward internationalism, is hardly more successful than the attempt to reconcile a repudiation of foreign influences with the assumption that among the Western nations one is the cultural and spiritual leader—formerly Germany, now the United States. The outbursts of impassioned rhetoric, although they add an element of excitement to the discussion, interfere with the logic. The book as a whole is interesting, and the style simple, clear, and vivid. The ideas are such as will be received with applause by those who already hold them.

FREDERICK F. BLACHLY.
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Democracy: Its Defects and Advantages. BY C. DELISLE BURNS. (New York: The Macmillan Company. 1929. Pp. 217.)

Democracy, as Dr. Burns envisages it, moves along three converging lines: the political, the industrial, and the educational. It cannot persist and achieve success in its political manifestation unless industry is similarly organized and an appropriate culture imparted to the common man. Dr. Burns is, on the whole, optimistic. The tendencies that he observes give him some ground for confidence in the fu-

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ture. If, during the past generation, culture has been spread a bit thin and has developed some objectionable aspects, nevertheless the people are being better educated, the voters are becoming more intelligent. In industry "there is less complete domination of large groups of men by a select few;" the manual workers are gaining an effective influence. In administration, we are told,—and this runs quite contrary to the view expressed by Mr. Ramsay Muir in his *Peers and Bureaucrats*,—"governing and being governed are no longer functions of two distinct classes. . . . Governing, rather than being governed, becomes the normal function of the citizen. . . . . A new art of government is being developed by comparison with which the authoritarian methods of the past are primitive." In all three fields, then, the latent potentialities of the common man are being called into play.

"Democracy in practice is the hypothesis that all men are equal, which is used in order to discover who are the best." Of its three characteristics—liberty, equality, and fraternity—the last is by far the most fundamental. Fraternity means "acting as if one's actions were a part of a whole with the actions of other men, coöperating in a common enterprise." This spirit of coöperation—this social perceptiveness and imaginative sympathy—has actually increased in the past century, Dr. Burns insists. It will be still further increased by education. In fact, as repressions are removed and impulses or tendencies given a new social direction, an immense store of new abilities may be released. "Rivers of energy and good fellowship are still held frozen by an ice-age of suspicion and jealousy. But the ice-age is passing; for not only by new laws or new institutions, but also by the acts of Nobodies, the democratic ideal becomes daily more operative and the minds of men are freed from fear. In the hands of Nobodies is the hope of the future."

These few quotations and comments do not give an adequate impression of the book. Dr. Burns has treated a familiar theme, a theme which would seem to offer little scope for originality, with invigorating freshness. If he has brushed aside too casually some of the criticisms of democracy, he has also introduced new factors and emphasized others that have received too little consideration. He peers below the superficial, momentary failures of democratic striving and rests his hope confidently on the operation of obscure, but dynamic, social forces.

E. M. Sait.

Pomona College.

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Die amerikanischen Revolutionsideale in ihrem Verhältnis zu der europäischen: untersucht an Thomas Jefferson. By Otto Vossler. (Munchen und Berlin: R. Oldenbourg. 1929. Pp. 192.)

Like the recent books of Hirst and Chinard, Vossler's study of the relation between the revolutionary ideas of America and of Europe represents a European scholar's appraisement of the political influence of Thomas Jefferson in America.

Vossler emphasizes that the American Revolution was a political rather than a philosophical movement. In pointing out the leading part played by lawyers in the struggle, the author reminds us that in civil-law countries the legal practitioner does not have the practical training in public affairs and constitutional questions which is the heritage of the profession in common-law countries. Thus the Revolution was a legal controversy over constitutional interpretation. The natural rights of Englishmen were conceived of as protected by positive law, as being part of the legal structure rather than its philosophical basis. American political institutions permitted the redress of specific grievances and the achievement of particular reforms. Agitation in the New World therefore was directed toward practical objectives. It did not develop into an introversive *Weltanschauung,* as in Europe. Deprived there of any constructive outlet, discontent was dammed up within a dream world until it burst the barriers in revolutionary violence. The American Revolution was accomplished, wrote Jefferson in the *Encyclopedia,* by the simple process of directing that governmental powers hitherto exercised by certain people should hereafter be exercised by certain other people. Colonies which already elected their governors, such as Rhode Island and Connecticut, did not even need to modify their constitutions. "We have changed our form of government," wrote Dr. Benjamin Rush to Richard Price, the English divine, "but it remains yet to effect a revolution in our principles, opinions, and manners, so as to accommodate them to the government we have adopted."

It remained for Price, with his doctrine of religious rationalism progressing mathematically from individual freedom to international federation, and Tom Paine, with his passionate onslaughts against tyranny, to perceive and proclaim the significance to mankind of events in the New World. Those writers were forerunners of Colonel George Harvey in the matter of telling the American people what they fought for.

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There was prevalent in France an ignorant idealizing of America. French and English histories of the American Revolution, as John Adams had pointed out, were nothing but worthless monuments of their authors' ignorance. The magic figure of the astute Franklin, and the language of American constitutions, widely read by the French, added to the tendency toward apotheosizing a legendary America.

This view of his own country Jefferson absorbed in Paris. Seeing the negation of democracy in France, he came to esteem it for America. Seeing the evils of absolutism, he was impressed with the virtues of popular government. He came to the view of Demeunier that Americans, without having studied aristocracy in Europe, know its faults only through their imagination, and hence do not treasure democracy highly enough. Jefferson left France before the Revolutionary excesses began, with a favorable picture in his mind of the French Revolution and of the American Revolution. In the United States, he found himself alone, neither a Federalist nor an Anti-Federalist. The new meaning which he attributed to the Revolution was one in accord with national needs. Founder of the conscious mission to mankind of the American democracy, Thomas Jefferson was the first citizen of the new world.

From the foregoing account of Vossler's very readable and interesting study, it will be seen that he somewhat over-emphasizes the influence of French thought on Jefferson. As Chinard has shown, it may be doubted whether the French did not learn more from Jefferson than he did from them. America was an example of republicanism practically successful; France merely an illustration of the evils of the opposite form of government. His French experience caused Jefferson to cherish more than ever the ideas and institutions for which he had contended in his native land.

It is unfair to infer from the existing excellence of a people's political institutions an indifference to intellectual and philosophical interests. One might as well infer from the ownership of valuable paintings a lack of interest in art; or from membership in the League of Nations a lack of interest in world peace. The fact that Americans could invoke existing legal and political machinery to protect their natural rights does not prove that they did not value those rights highly. One must not think them less interested in liberty than the French, but rather more, when they have gone beyond mere parlor meditation and embodied their rights in positive law. Because they did not spread their philosophy of liberty by conquest of other peoples

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to give them freedom, as the French did, but instead, by the Monroe Doctrine, asserted that there must be no interference with the political life of peoples striving to establish free government for themselves, it must not be supposed that Americans wished to preserve the blessings of liberty as their exclusive birthright.

EDWARD DUMBAULD.

Harvard Law School.

French Liberal Thought in the Eighteenth Century. By KINGSLEY MARTIN. (Boston: Little, Brown, and Company. 1929. Pp. xviii, 313.)

This book is a great advance over the series of studies consecrated by Morley to the French eighteenth century which has hitherto been the best treatment of the subject available in English. Possibly Mr. Martin's only advantage is his modernity, and Morley, like other Victorian classics, may have time on his side. But to us Morley seems tied to an Ethical Society rationalism, an over-simple psychology, a sense of propriety, and a feeling for English superiority. These last two characteristics are never conscious in Morley; he does indeed make great effort to be open-minded. They are simply parts of that ill-defined and, by us, no doubt abused, label for a way of thinking and living known as Victorian. Mr. Martin is particularly sensible about Rousseau; but in a hundred ways, such as his admission that the political theory of the Fronde is analogous to that of the Great Rebellion in England, his statement that "Too much has been claimed for the English deists as an influence on eighteenth-century France; for Bayle was a deist before Tindal or Toland" (p. 47), and his very evident feeling that the kind of French patriotism found in Faguet, if a little amusing, is also not unnatural, he shows a real freedom from what used to be called English insularity. One is tempted to believe, when one considers the work of men like Mr. Martin, Lytton Strachey, G. Lowes Dickinson, and many others, or the enthusiastic reception of the work of Proust in England, that Englishmen really do understand Frenchmen better than their fathers did. Perhaps, however, a reading of current English newspapers would make such a belief less apparent.

Mr. Martin's book is admirably composed. From Juieu to Condillac, he traces the growth of ideas hostile to the *ancien régime* and their hardening into a revolutionary faith. He is too good a child of his age to use exclusively what he terms the "great thinker" method and the "philosophic" method. He proposes to relate the revolution-

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ary abstractions, Liberty, Equality, and Fraternity, to the living flesh; and in this process he is the dupe neither of a faith in the driving force of ideas as such nor of a certitude that interests—chiefly economic interests—explain all political action. Indeed, one of the best parts of the book is his brief and sensible treatment of the much-discussed problem of how far the *philosophes* are responsible for the Revolution. Recognition that ideas and interests interact in the political consciousness of men is to him "the beginning, not the end, of an inquiry" (p. 66). The concluding chapter is an interesting attempt to suggest how much of eighteenth-century thought is valid today.

Mr. Martin does, however, fall into the old-fashioned liberal habit of damning the *ancien régime*. His "Leviathan State" seems unreal in the light of researches by French social historians from Babeau to Georges Lefebvre. One ought not to say that Louis XIV "totally ignored the ancient French constitution" (p. 29), without explaining what that constitution was; and a statement like "the peasant still paid away eighty per cent of his livelihood to his king and his lord" (p. 55) at least deserves a footnote.

CRANE BRINTON.

Harvard University.

The Diary of John Quincy Adams, 1794-1845. Edited by ALLAN NEVINS. (New York: Longmans, Green and Co. 1929. Pp. xx, 585.)

The memoirs of John Quincy Adams have long been considered perhaps the most valuable source a college student interested in American history ever encounters, but many libraries find it very difficult and expensive to procure this monumental set now long out of print. In a very attractive volume of only 575 pages, Mr. Nevins has succeeded remarkably well in giving college students and the general reading public a comprehension of the contribution made by these memoirs to an understanding of the great episodes of American history throughout the half century of Adams' activity. Few undergraduates have time for more reading even in this indispensable source than they here find conveniently arranged upon all major episodes such as the Chase impeachment, the evolution of the Monroe Doctrine, the peace negotiation of 1816, the presidential election of 1824, the bitter struggles of the Jackson administration, South Carolina nullification, the Gag Rule, Abolition agitation, and many others.

The editor is to be complimented highly, not only upon the material which he has selected from so rich a field, but also upon what he has

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seen fit to leave out. It is highly probable that the average student can get, not only a richer conception of the mentality of John Quincy Adams, but also more of a real understanding of these many episodes throughout the first half of the nineteenth century in American history, from this brief condensation of the memoirs than he ever would obtain from perusing the complete work.

Each chapter is equipped with a significant table of contents, and the volume has an adequate index. The footnotes are not numerous, but illuminating. The publishers are to be congratulated upon the mechanical make-up of the volume. The work should be found on the shelves of every library, high-school, city, and college, even where the complete memoirs are also to be found.

J. L. CONGER.

Knox College.

The Open Door and the Mandates System. By BENJAMIN GERIG. (London: George Allen & Unwin, Ltd. 1930. Pp. 236.)

Dr. Gerig is well qualified for the task here undertaken. For several years a student and teacher of economics in the United States, he has recently pursued further studies as a fellow of the Institute of International Studies in Geneva, and is now a member of the Information Section of the League of Nations. The book appears to have been written under the special guidance of William E. Rappard, the able Swiss professor who, as the first director of the Mandates Section of the League Secretariat, and since as a member of the Permanent Mandates Commission, probably knows more about the actual working of the mandates system than any one else. Dr. Gerig has had ready access to materials and unusual opportunity for obtaining pertinent information at first hand.

The result is an excellent volume. In the first three chapters the author traces the historical development of the open door policy, always with reference to its special application to colonial dependencies. One of these chapters is devoted to the development of colonial tariff policies prior to the Berlin Act of 1885, and the other two to a careful exposition of the setting, character, and effects of the Berlin Act, and to the other open door developments down to the time of the Peace Conference. Being concerned only with colonies and mandates, Dr. Gerig deliberately omits any discussion of such an important phase of the open door problem as its application to China by John Hay. In these chapters he shows that the open door policy in its colonial aspects was first adopted by Great Britain during the middle of the nineteenth cen-

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tury, that other countries followed suit, and that Germany in particular maintained the open door during the entire period of her colonial empire. The later movement for protection in England, the adoption of the preferential system by the dominions, and particularly conditions of the war, brought about a reversion on the part of Great Britain to a system of imperial preference. Since France and Italy, and even the United States, had in general been practicing "assimilation" or "preference," the difficulties in the way of adopting a genuine open door in the newly established mandates were obviously the greater.

The fourth chapter is given over to a discussion of the way in which the Peace Conference met these difficulties. The result was an inevitable compromise, but at any rate a partial establishment of the open door. In three other chapters the author examines the working of the mandates system, and concludes not only that the expert, impartial, and diligent supervision exercised by the Permanent Mandates Commission has made of the mandates system a very real plan of trusteeship instead of annexation, but that a high degree of economic equality has also been maintained. The attitude of the United States in insisting upon absolutely equal economic opportunity for itself in all classes of mandates (to which a separate chapter is devoted), was, under the circumstances, neither ethically correct nor, in all cases, legally sound. But it did have this beneficial result, that the terms of the Covenant have been liberally interpreted and the principle has in effect been established that "the advantages of the sacred trust of civilization set forth in the mandate principle are to accrue both to the peoples under mandate and to the economic and other interests of the world at large." Better still is the evidence that the mandate principles are already being extended to other regions, and their still further extension is being urged. The author cites, for example, the memorandum of the British Labor party in April, 1928, declaring that the mandate system "makes it necessary to consider even in the case of British dependencies the possibility of some kind of international control" (p. 198n.); and earlier than that the French minister of colonies declared: "Reforms accomplished in one place will inevitably penetrate elsewhere. Whether we like it or not, colonial questions have ceased to be purely national; they have become international, placed under the eyes of the world" (p. 122).

Dr. Gerig is no uncritical admirer of the mandates system, and he makes no claim of unqualified success for that system. He is clear,

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however, that it is a considerable improvement upon the old colonial system and offers much for the future. "Colonial enterprise today is mainly in the hands of ten nations. That this distribution is equitable from any point of view can easily be challenged. The open door is a partial immediate remedy for the inequalities which are incident to this unequal distribution of the markets and resources of the undeveloped territories of the world. The mandates system is undoubtedly the most effective instrument yet devised to make the open door effective" (pp. 198-199). Both Gerig and Rappard, who has written a foreword to the book, seem to feel that the ultimate success of this new experiment in colonial administration is dependent upon the support of an enlightened public opinion.

A good bibliography and six appendices are added, the latter reproducing the texts of one of each type of mandates agreement, the mandates treaty between the United States and Great Britain with respect to Tanganyika, the San Remo Oil Agreement of 1920, and a map showing the mandated territories. Altogether, this is a most excellent and useful volume.

CLARENCE A. BERDAHL.
University of Illinois.

Tsingtao under Three Flags. By WILSON LEON GODSHALL. (Shanghai: The Commercial Press. 1929. Pp. xxi, 580.)

Seven years ago Professor Godshall published at the University of Pennsylvania a doctoral dissertation entitled *The International Aspects of the Shantung Question.* Two years later he spent a year in China in further study of the subject. The result is an expanded work of enhanced value. Unlike one well-known writer who prefaced his study with the statement, "This volume tells everything that the student or the casual reader needs to know about the Chinese Question," Mr. Godshall modestly admits that his study "cannot be regarded as conclusive." His claim that much of his material has not before been published, and that other parts have hitherto been difficult of access, is substantiated in the volume under consideration. Especially is this true in the matter of statistics.

While admitting the right of an author to define the scope and content of his work, it would appear that a book carrying the title above mentioned should have less material of a general and secondary nature than is the case here. A considerable part of Chapters I, II, III, and V, dealing with the expansion of Russia, Germany, and Japan, might well have been omitted. The facts presented are either well-known or

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easily accessible to any student of the history of the Far East. Moreover, in an attempt to cover a vast field in a limited space the author has allowed errors to creep in, e.g., a reference to Frederick II as the Great Elector of Brandenburg (p. 72); a statement that China "began to attach to each treaty a declaration by the king of Korea stating that in fact he was tributary to China" (p. 162); and a reference to the flight of the Imperial court to the "Western Hills" in 1900.

The book is badly bound. The illustrations, however, are excellent. There is an appendix containing many of the leading documents in the field. The index is satisfactory. The bibliography contains no mention of *Die Grosse Politik*, nor is this source mentioned in the footnotes. Nevertheless, the student who desires a detailed discussion of the important subject of Shantung from 1914 to 1922 will find a great deal of value in Dr. Godshall's study, which is admirably objective. The last chapter, "China's Opportunity," in which an account of Tsingtao after its return to China is given, is of outstanding interest.

HARLEY FARNSWORTH MACNAIR.

University of Chicago.

The Dissenting Opinions of Mr. Justice Holmes. Arranged with Introductory Notes by ALFRED LIEF. Foreword by Dr. George W. Kirchwey (New York: The Vanguard Press. 1929. Pp. xviii, 314.)

This volume rather more than fulfills the promise of its title, for along with dissenting opinions are included a number in which Justice Holmes had more than God and Justice Brandeis at his side, and at the end is given a generous budget of those graphic and enlightening phrases and paragraphs for which the instructed reader must always be on the alert in perusing anything from the inspired pen of this Ithuriel.

What are the qualities of mind that stand out in Justice Holmes' judicial opinions, besides learning and lucidity? They are, first, the completest sense of the relativity of things; and, secondly, an almost paradoxical strength of determination to prevent liberty from being strangulated by property. The latter makes him the champion of democracy; the former puts him entirely beyond democracy's comprehension. The two together have furnished him with a scale of values in the field of constitutional interpretation that, to the reviewer at least, rings true nine cases out of ten.

Mr. Lief's compilation makes a good companion piece to Professor Laski's *Collected Legal Papers of Oliver Wendell Holmes.*

EDWARD S. CORWIN.

Princeton University.

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BRIEFER NOTICES[3]

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW.

"The Index and Digest to State Legislation," authorized by act of Congress approved February 10, 1927, was designed to fill a long-felt want. (See the note prepared by Herman H. B. Meyer, director of the Legislative Reference Service of the Library of Congress and printed in 22 *American Political Science Review* 121-127). The first volume of the new index, covering state legislation during the biennium 1925-26, has recently been published by the Government Printing Office under the brief title, *State Law Index, No. 1.* It is based upon the experience of the Legislative Reference Service in indexing state legislation for the use of members of Congress, and is constructed in accordance with the plans of Director Meyer as explained in the note referred to above. It contains an index to state legislation, which occupies 358 printed pages, a digest of important state legislation in nearly 100 pages, and a further digest of state laws relating to administrative organization and personnel in 130 pages. Finally, there is a statistical summary of state legislation during 1925-26, showing that a total of 16,099 acts were passed by the state legislatures, filling 33,068 printed pages. The preparation of such an index and digest involves many difficulties. In dealing with those of a technical nature, Director Meyer has endeavored to meet the needs of the student of comparative state law without producing a volume which would be excessively bulky or expensive. To this end, he indexed only the general permanent law enacted during the biennium, omitting private and local acts (with occasional exceptions) and also temporary acts, appropriations, and acts dealing with administrative personnel and organization. The latter, however, are covered in a separate digest. The work has been executed with good judgment and painstaking care. It will amply meet the expectations of students of political science, and, if properly supported by Congress, should eventually lead to a series of indices of permanent and increasing value.

A. N. H.

[3] In the preparation of the Briefer Notices, the editor in charge of book reviews wishes to acknowledge the assistance of Dr. E. P. Herring.

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The American Year Book for 1929 (pp. xx, 884), like its predecessors, devotes over one-third of its space to developments during the past year in the field of American government, under the headings of political history, international situations affecting the United States, national government, state government, municipal government, territories and spheres of influence, public finance and taxation, public resources and utilities, defense and armaments. Among the topics of special interest to teachers of government are significant federal legislation, presidential policies, state and local elections, foreign service, treaties completed and ratified, Latin-American relations, American relations in the Orient, international conferences, America's relations with the League of Nations and World Court, personnel of the national government, federal judicial prosecutions, national and interstate relations of states, state constitutions, referenda and initiatives, changes in electoral laws, state legislatures and legislation, state executives, state administration and judiciary, county and rural government, city politics, types of municipal government, metropolitan and regional planning, zoning, public service commissions, public utility mergers, and municipal ownership and operation. The contributors on these topics are practically the same as those for the 1928 volume and include many of the leading teachers in the field of government. The editors are Albert Bushnell Hart and William M. Schuyler, and the publishers the American Year Book Corporation. As a reference work, this compilation is indispensable to the teacher and student of American government.

Henry W. Clark's little *History of Alaska* (Macmillan Company, pp. 207) is the first book to cover the subject in its entirety and is an authoritative and accurate account of the development of that region. It is suggestive rather than exhaustive, but shows the result of much careful research, especially in material covering this century and the last decade of the nineteenth. A survey of present economic conditions is also given, but the features most useful to political scientists are Alaska and its frequent appearance in international affairs, and the account of its territorial government. The fact that Mr. Clark came from Alaska gives an added weight to his opinions and lends interest to his work.

The Constitution of the United States, by William Bennett Munro, has been published by the Macmillan Company (pp. viii, 197). The

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purpose of this little volume, the author explains, is to present, in concise form and non-technical language, what the various clauses of the nation's fundamental law express and imply. "It is for those who wish to acquire a general familiarity with the national constitution as a document, but who are not minded to follow all the intricacies of constitutional interpretation. Hence this brief commentary cuts loose from the welter of footnotes, references to judicial decisions, bibliographies, and historical digressions which usually encumber books of its sort." Here is the constitution reduced to its simplest terms.

E. P. H.

FOREIGN AND COMPARATIVE GOVERNMENT

In these critical times for India, special interest attaches to *Indian States and British India,* by Gurmukh Nihal Singh (Nand Kishore and Bros., Benares, pp. xiv, 380). The author, who is head of the department of economics and political science at Benares Hindu University, gives a well-documented account of the present position of the Indian states and analyzes at some length the findings of the Butler Committee. Contrary to the opinion of the latter body, he holds it unquestionable that the relations of the states are with the government of British India, and not with the crown, and suggests that the British have invented the theory of the direct relationship with the crown in order to prevent or delay the consummation of Indian political unity. For the attainment of a true federation of India he contends that the smaller states must agree to amalgamate into larger units, and that all the states must transform themselves from autocracies into constitutional democracies. More than half of the volume is made up of a useful collection of documents.—R. E.

Industrial Arbitration in Great Britain, by Lord Amulree, published by the Oxford University Press (pp. x, 233), traces in concise fashion the long history of labor legislation in Great Britain dealing with the regulation of wages, organization in unions, and conciliation. Particular attention is given to the various methods attempted for the peaceful settlement of industrial disputes. The author finds the Industrial Court instituted by the government in 1919 the most rational and convenient means of achieving peace in labor disputes that has yet been devised. He regards it as the consummation of the long preceding period of experimentation in industrial arbitration. Lord Amulree comes to the general conclusion, however "that the settle-

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ment of industrial differences otherwise than by means of a trial of strength between employers and workpeople is primarily not a matter of administrative machinery or legislative procedure, but of goodwill and common sense."

J. Ramsay MacDonald, Labor's Man of Destiny, by H. Hessell Tiltman (Frederick A. Stokes Company, pp. x, 456), is not a great biography. It is eulogistic rather than penetrating, expository rather than interpretative. Nevertheless, the facts of MacDonald's career are set forth in an orderly and readable fashion, and the labor leader, through the liberal use of quotations from his speeches, is allowed to speak for himself. There is much to commend this method in recording the life of a man still living. The chapters on the "interregum" and on the British Commonwealth of Nations are particularly graphic in demonstrating MacDonald's attitude as reflected in his spoken and written word. The book is advertised as the "authorized life-story of the great Labor Prime Minister." It impresses the reader as authentic and interesting, though hardly definitive.

A Source Book of Constitutional History from 1660 has been published by Longmans, Green and Co. (pp. xii, 505). The volume was compiled by D. Oswald Dykes, professor of constitutional law and constitutional history in the University of Edinburgh. Covering the period from the Restoration to the present time, the book contains reprints selected from the statutes, acts, and judicial decisions of significance in the history of the English constitution. The documents have been grouped under topical heads, and an effort is made in a long introduction to link together the various materials and to place them in their proper context.

Joseph Baernreither's *Fragments of a Political Diary,* edited by Professor Joseph Redlich (Macmillan, pp. 322), will be of great interest to all students of pre-war politics, but especially to those who have devoted time and study to the problems of the old Hapsburg empire. The author of these notes was a prominent Austrian deputy and statesman who for many years followed the course of Austro-Serbian relations with the keenest attention and devoted himself to the amelioration of the position of the southern Slavs within the monarchy, with the firm conviction that the Empire must be reorganized or it would be smashed. This volume abounds in valuable observations on the social

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as well as political conditions in Bosnia, Herzegovina, and the other Slav provinces, the observations being interspersed with the author's critical comments on the policies pursued by the government. The period more particularly dealt with is that from 1906 to 1914. Baernreither was in close contact with both Aehrenthal and Berchtold and has much to say of the crises arising from the annexation of Bosnia and Herzegovina and from the Balkan wars. He repeatedly stresses the short-sightedness, and even blindness, of the government, and clearly shifts the responsibility for the debacle to the shoulders of the Viennese officials. The reader, coming from Baernreither's own excellent account of the complicated situation in the Balkans in the pre-war period, may, however, be inclined to doubt whether, with so much inflammable material concentrated in a relatively restricted area, a conflagration was really avoidable.—W. L. L.

It is a relief to see a general and popular book on Russia like *Humanity Uprooted,* by Maurice Hindus (Jonathan Cape and Harrison Smith, pp. xix, 369), written in English by one who knows Russia. Mr. Hindus' competence shows itself in his accurate observation and judicious generalization. His knowledge of pre-revolutionary Russia gives him a commendable perspective in the appraisal of present-day conditions. The part which depends upon personal observation will receive the approval of most travelers in any way competent to observe; the smaller part which deals with political and moral questions will invoke responses which depend upon far more than one's feeling about the new Russia. But the book as a whole should receive universal commendation for its unimpassioned tone and its objective effort to see Russia and the Russians from the point of view of those whose lot is irrevocably thrown in with the new régime. It should dispel many myths and stimulate much thought.—R. O.

My Life, by Leon Trotsky (pp. xiv, 559), is an absorbing story of the revolutionary leader, his boyhood, his adventurous career of hazard, imprisonment, exile, and escapes, his activities in Soviet leadership, his struggle within the party, his deportation, and his present residence on Prinkipo. Trotsky tells the tale with spirit, with some rancour, but always with a strong injection of his personality and a depth of feeling that gives the narrative vitality and verve. There is almost no philosophizing, no attempt at profundity, little analysis of the momentous events recorded. The author seems concerned primar-

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ily with narration. He has an interesting and important story to present, and he tells it well. The book is published by Charles Scribner's Sons.

Federative Staatsbouw, een Vraagstuk voor Nederlandsch-Indie, by Dr. F. W. T. Hunger, Jr. (H. J. Paris, Amsterdam, pp. 134), is a study of the existing forms of federal government, with special reference to the possibility of the development of some such organization in the Dutch Indies. Conditions in the Federated Malay States are probably most like those in the Dutch colonial possessions, and the former could well serve as something of a model. The greatest difficulty in any such development lies in the inequality and diversity of the probable members of the federation. But as Dr. Hunger does not regard equality as a requisite to union, he believes this obstacle can be overcome.

F. F. G. Klenwaechter, a proponent of the *Anschluss,* presents in *Self-Determination for Austria* (George Allen & Unwin, pp. 74) a plea for union between Germany and Austria on the basis of Wilson's doctrine of self-determination. Union, according to this popularly-written booklet, is inevitable, since Austria cannot exist permanently as an independent state, and since racially, culturally, and historically the Austrians form part of the German people. There is a brief discussion of Austria's situation today, and of the means by which Austria can be helped.

INTERNATIONAL LAW AND RELATIONS

The John Day Company has published *The Way of Peace—Essays and Addresses,* by Viscount Cecil (pp. vii, 256). As is inevitable in a collection of public addresses, this book is full of repetition and is directed less toward exposition and analysis than toward persuasion. Its major interest lies in the fact that it was written by a statesman who perhaps contributed more than any other toward the development of the League of Nations. Lord Cecil believes that persistent, cooperative effort through permanent institutions, capable of growing in strength, is the key to political and social progress, whether in international or national life. He finds this philosophy justified by the historic record of the steady growth of areas within which peace and order prevail, from the tribe through the city and nation to the family of nations (p. 104). Stability is thus his criterion of progress. He

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is essentially a conservative, but in his willingness to abandon old methods and try new ones for the achievement of this purpose he is distinctly liberal. The political scientist will perhaps be most interested in the writer's observations on practical politics as it operates in the two institutions with which he has been most familiar, Great Britain and the League of Nations. Lord Cecil is both a moralist and a practical politician. He believes in sticking by ideals, and he also believes in accepting the best compromise available at the moment. The reconciliation of these two beliefs is the theme continually reverted to in these addresses. For instance, we are introduced to such problems as when a party man should vote against the ministry (p. 38); whether President Wilson was right in refusing to make concessions on the Covenant (p. 236); when the rule of unanimity is good and when it is bad (p. 187); why utility alone is an unsafe guide for national policy (p. 135).—Q. W.

The Unity of the World, by Guglielmo Ferrero, is published by Albert and Charles Boni (pp. 196), and *A World Community*, by John Herman Randall, is from the press of Frederick A. Stokes Co. (pp. xvii, 294), two books on the same topic, but treated in widely differing fashions. Mr. Randall discourses upon the forces creating a world-consciousness and then upon the chief obstacle to the realization of a world community. He emphasizes the necessity of attaining a proper understanding of the new interstate relationships brought about by the modern economic and political developments in the world. The volume is based largely upon an undiscriminating assortment of recent books, some of dubious content, dealing with the subjects discussed. The author has nothing new to offer and is frankly engaged in introducing a series of books to follow on more specialized phases of world unity. One turns to Guglielmo Ferrero's volume with interest quickened by Professor Charles A. Beard's introductory recommendation. The latter writes: "If I am not sorely mistaken, this book will become one of the universal classics to be read with Plato and Aristotle by the long generations to come." The reviewer finds little to substantiate this estimate. The book is a pleasantly written essay setting forth some fresh generalizations which, although original and suggestive, hardly impress one as convincing or significant. Ferrero discusses the present trends and the probable developments in international affairs against a rich background of historical reference. Whether or not one agrees

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with the author's sweeping statements or confident analyses, his theories are challenging and his style of presentation piquant.—E. P. H.

Imperialism and World Economy, by Nikolai Bukharin, with an introduction by Lenin (International Publishers, pp. 173), is an interesting but rather thinly propounded thesis, written in 1917, which attempts to extend the Marxian theory of capitalism to its modern manifestation, imperialism. As seen by the author, the tremendous advances of the productive forces of world capitalism, culminating in large-scale production, has progressed into a stage where control rests in the hands of a few "magnates of capital." State power, as well as the economic elements of state life, have become the domain of a financial oligarchy which is rapidly assuming world proportions as overproduction proceeds to build up international cartels and world-embracing financial units. A Marxian evolutionist, the author finally comes to the conclusion that capitalism, by driving the concentration of production to extremes, and by creating a centralized production apparatus, has prepared its own destruction, in so far as it builds up a highly centralized economic system completely adapted to the transitional needs of communistic organization. On the whole, the book contributes nothing that is new to the question already so fully expounded by Marxian writers. Lenin's introduction of six pages, in addition to referring briefly to capital as the source of present-day world power, includes an interesting criticism of Kautsky's theory of a peaceful ultra-imperialism.—M. W. R.

The Franco-Russian Alliance, 1890-1894, by William Leonard Langer (Harvard University Press, pp. ix, 455), is a careful and intelligent study based upon all available pertinent material, including particularly that in the archives at Vienna. A substantial introductory portion explains the situation which led to the Franco-Russian alliance. A complete account of the actual negotiations awaits further publication by the governments concerned. Dr. Langer has nevertheless constructed a clear and apparently adequate account, with lifelike pictures of the principal negotiators. He discerns no noteworthy concrete advantages resulting for France, but a great many for Russia. The concluding chapter outlines the consequences of the alliance up to 1914. The bibliography is extraordinarily complete and well annotated.—A. H. L.

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Under the title of *Nationalism and Internationalism* (Frederick A. Stokes Company, pp. xi, 273), Herbert Adams Gibbons has added another to his already long list of popular historico-political writings. The present volume contains six lectures delivered in 1927 at the Institute of World Unity in Green Acre, Maine. The lectures consist of an outline of the history of nationalism from the earliest times down to the post-war period. Despite an apparent conviction that nationalism, at least in its later stages, has been a disruptive force leading inevitably to international suspicion and war, Mr. Gibbons suggests, in his rather unexpectedly optimistic concluding pages, that "the hope of internationalism lies in nationalism."—R. E.

The League Council in Action, by T. P. Conwell-Evans (Oxford University Press, pp. 291), while adding little to the texts already published, nevertheless presents the functions and powers of the League in a manner quite convenient for the use of students. Part I deals with the legal basis of the authority of the Council of the League; Part II with the rôle of the League as a guardian of the peace; and Part III with international disputes. The author has devoted most of his space to a description of this latter point, with special emphasis on the functions and limitations of the powers of the Council.—M. W. R.

An excellent survey of Chinese public finance is furnished by Dr. A. G. Coons in his monograph, *The Foreign Public Debt of China,* published by the University of Pennsylvania Press (pp. 251). This volume contains not only a comprehensive and precise description of the various loans to the Chinese government by foreigners, but also a careful analysis of the existing and potential financial resources of that government. The author's object is to estimate the ability of the government to meet its foreign obligations—assuming the existence of a government of China and of a disposition to pay its debts. Mindful of this object, the author distinguishes between the economic and political factors in the problem, and resolutely avoids the assumption of responsibility for predicting the future course of Chinese politics. Within the limits prescribed by his methodology, his thesis is definite and convincing. "Whatever group succeeds in uniting China," he concludes, "if in point of time that success is not too far removed, can, if it will, meet China's foreign indebtedness."—A. N. H.

In Donald C. Blaisdell's *European Financial Control in the Otto-*

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man Empire (Columbia University Press, pp. 243), European imperialism is portrayed as the real administrator of the Ottoman public debt, with economic control gained by means of loans, budget supervision, and political intervention. The sequence begins with foreign investments, followed by financial tutelage and intervention. Turkey before the World War is here designated as under the domination of the interested Powers, and significant inferences may be drawn from the policies of these states. Dr. Blaisdell's treatment of the problem as it existed before the World War is informative. As for his treatment of Turkey under the present Kemalist régime, it suffers somewhat from the obvious inaccesibility of pertinent data under the more or less absolutist dictatorship. Dr. Blaisdell's emphasis upon the nationalist movement as a powerful instrument against foreign control, however, strikes the keynote of the present situation in Turkey. And, as he is careful to point out, in spite of the almost fanatical opposition to foreign financial aid, some vestiges of the old control still remain.

—M. W. R.

Since the dawn of history, the Egyptian question has in some form faced the world. The mention of Fashoda recalls Marchand and Kitchener and the French and English rivalry for control of the Upper Nile when faced by the then increasing influence of Germany in world affairs. *Fashoda, The Incident and its Diplomatic Setting,* by Morrison B. Giffen (University of Chicago Press, pp. ix, 230), based in part upon recently published records, presents an excellent picture of this late nineteenth-century episode. There is a good bibliography and an index.

Judge Bustamente, of the Permanent Court of International Justice, in *La Mer Territoriale* (Antonio Sanchez de Bustamente y Sirven, pp. 304, Paris, 1930), translated from the Spanish, gives in some detail his work on marginal waters in connection with the American Institute of International Law. After a brief historical sketch, he summarizes attempts to codify the law of territorial waters, outlining the problems and solutions. As evidenced at The Hague a few months ago, the difficulties of codifying the law of the sea are somewhat greater than Judge Bustamente had anticipated. There is an unusually complete bibliography.

The lectures of Professor A. L. delle Piane on the *Doctrina de Monroe* (pp. 97) have been published by Jurisprudencia Uruguaya (Pub-

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licacion No. 5, Montevideo). Eight of the lectures cover carefully the history and various interpretations of the doctrine. The ninth and last is a study of the nature and theory of the doctrine. The author's conclusion is as follows: "The true Monroe doctrine is the affirmation of the sovereignty of the American countries who have acquired their independence. Every attempt against the independence of an American state is a violation of the Monroe doctrine."

POLITICAL THEORY AND MISCELLANEOUS

The Oxford University Press has published an interesting and attractive survey called *The Seventeenth Century* (pp. xii, 372), by G. N. Clark, fellow and tutor at Oriel College, Oxford. The political scientist will be particularly interested in Chapters V, VIII, and X, dealing respectively with comparative constitutional history, international law and diplomacy, and political thought. Constitutional history is characterized by the fact that "the experience of the seventeenth century caused republican ideas to be generally discarded, and led both men of action and men of thought to throw their influence on the side of the kings." As to international law and diplomacy, the author reaches the conclusion that in spite of the systematization of international law, "the fundamental reason for the poverty of the results of the international statesmanship of the century was ignorance." The discussion of Grotius is quite penetrating and might well be summarized in the author's own explanation of the greatness of his work: "It lies in its laborious avoidance of too much originality." In his reflection upon political thought, Mr. Clark reaches a view somewhat opposed to the above quoted conclusion of his analysis of constitutional history; for he sees the acme of political speculation in Locke. But there is little in Locke, who stands at the end of the century, that is not in Althusius, whose system of politics had ushered in the century. What separates these two thinkers is the Thirty Years' War and the two English revolutions, which had exactly reverse effects. The reviewer feels that these revolutions have not been assigned sufficient weight to balance the account of comparative constitutional history. On the other hand, on what grounds can it be said that Althusius is deficient in the criticism of his fundamental principles? There have always been two types of political thinkers: those whose fundamental principles are critically evaluated in terms of philosophy, and those whose critical foundation is juris-

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prudence. Althusius belongs to the latter class. Throughout the book there seems to be a certain lack of appreciation of the tremendous pioneer work accomplished by the highly developed city states in all matters pertaining to the technique of statecraft. This leads the author into erroneous assertions. For example, in speaking of diplomatic technique, he tells us that no other country at that time approached the French diplomats in the technique of their calling. This is undubitably wrong when the achievements of Venetian diplomacy are recalled. As a matter of fact, the progress of the French in this direction, as in a number of others, are part of that general process of Italianization so much resented by French patriots during the sixteenth century. But, on the whole, the book shows penetrating insight. It is a pleasing feature that the author succeeds well in giving a view of the European development in its entirety. There is no over-emphasis of any one country. By and large, his value judgments are well-founded and express the prevailing opinion of those best informed. His panorama is colorful, rich in detail, and correct in fundamental coloring, making a book worthy of the attention of him who would agree with one of the seventeenth-century pamphleteers that "whosoever sets himself to study Politicks, must do it by reading History."—C. J. F.

Public utilities and their regulation continue to attract more and more attention, as indicated by the increase in the number of books and studies on the subject. Among the most significant of these is *Public Ownership on Trial: A Study of Municipal Light and Power in California* (pp. xviii, 186), by Frederick L. Bird and Frances M. Ryan. The book is based, not only upon official reports, but also on visits by the authors to each of the twenty-five municipal plants in the state and personal conferences with numerous city managers, superintendents, auditors, accountants, and other public officials. The study deals with the growth of municipal ownership of light and power in California, physical statistics, financial statistics, methods of management, public power development in irrigation districts, and the law of municipal ownership in California. Separate chapters are devoted to the Pasadena and Los Angeles systems. The authors have been most fair minded and objective in their study, and have confined themselves to the presentation of facts and actual experience rather than arguments for or against municipal ownership. They express

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the opinion, however, "that municipal ownership of light and power in California appears firmly established," and that in the main "the public systems have achieved financial success. . . . . While the economies of large-scale generation of power have forced small cities to abandon generating plants, the recent revolutionary changes in the power industry have resulted in the sale to private companies of only two small distribution systems, both in towns of less than 500 population" (p. 22). *The Changing Character and Extent of Municipal Ownership in the Electric Light and Power Industry* (pp. ix, 102), by Herbert B. Dorau, the first monograph in a series of studies in public utility economics published by the Institute for Research in Land Economics and Public Utilities, is a preliminary report covering only a part of a larger study on the growth and development of municipal ownership in this field. The report is a statistical analysis of the growth of municipal ownership, the flux of ownership from private to public hands and vice versa, the growth of public ownership by geographic divisions, changes of a technical character, length of life of municipal establishments, and municipal ownership in communities of different sizes. The statistical material is preceded by an interesting presentation of the important factors explaining the rise and fall of municipal ownership, namely, legal and political factors, technological factors, economic factors, and "the causes to be found in the successive changes in the philosophy of the people at large with respect to the desirable extent of governmental conduct of essential services." *Control of Public Utilities Abroad* (pp. 88), by Orren C. Hormell, is reprinted from the Report of the Commission on the Revision of the Public Service Commissions Law of the State of New York and distributed by the School of Citizenship and Public Affairs of Syracuse University. Professor Hormell explains briefly the extent of public ownership and the methods of control of public utilities in Great Britain, France, Germany, Norway, Sweden, and Switzerland. The study is based upon a first-hand investigation in several of the European countries and the analysis of numerous books, reports, and statutes, to which there are ample references. For each country the author has given a bibliography including the most useful sources of information.

There is a regrettable absence of monographs dealing with the policies and practices of state utility commissions. In *Public Utility Control in*

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Massachusetts, by Irston R. Barnes (Yale University Press, pp. vi, 239), we are given an excellent study of this nature. The main portion of the book is devoted to a history and analysis of the regulation of security issues and rates. As to the former, the author concludes that "there is virtually no over-capitalization of utilities in the state. But what is more important, the Massachusetts authorities know exactly what have been the investments in the various utilities. In this respect Massachusetts occupies a unique position, being far in advance of the other states. Massachusetts has had an excellent chance to adopt any theory of rate regulation it desired." In spite of this favorable situation, however, the Massachusetts commissions do not seem to have adopted any particular valuation theory. This may come as a surprise to those who have long associated Massachusetts with the prudent investment theory. Dr. Barnes' conclusion is amply substantiated by a discussion of a large number of rate cases, showing the application of a policy in some respects more akin to the reproduction than to the prudent investment theory. This book is a real contribution to the literature on public utility valuation.—H. L. E.

Materials for the Study of Public Utility Economics, by Herbert B. Dorau (Macmillan, pp. 975), is a very comprehensive and useful collection of readings. The major emphasis is on the growth, organization, and management of utilities, but considerable space is devoted to problems of governmental control. There are a number of selections on the legal status of public service industries, alternative forms of regulation, valuation and rate-making, taxation, and public ownership. The author has attempted to select material representing various points of view with respect to these controversial subjects. The wide scope of the book has necessitated the use of somewhat brief excerpts, but these have been judiciously selected. There is here much of value for courses in economics or political science dealing with public utility problems.

The Government and Railroad Transportation, by Albert R. Ellingwood and Whitney Coombs (Ginn and Company, pp. 642), is a book of readings designed to supplement text-book assignments in courses in transportation. A few excerpts are given illustrative of the definition of interstate commerce, the division of regulatory powers between the federal government and the states, and the experience of state regulation. Most of the selections are concerned with the Inter-

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state Commerce Act. They consist largely of judicial decisions defining and interpreting the powers of the Interstate Commerce Commission, although portions of statutes and administrative orders and reports are frequently used. This is by far the most comprehensive collection of readings to be found on the subject. Questions suggesting additional study are appended to each section. A suggested list of readings supplementing these questions would have made the book even more useful.—H. L. E.

Railroad Consolidation, by Julius Grodinsky (D. Appleton and Company pp. xi, 333), furnishes an analysis of the problem of transportation consolidation and suggests a legislative program. It is urged that the main object of consolidation should be the efficient movement of traffic, and that legislation should be directed to the accomplishment of that end. In view of pending legislation, perhaps the most interesting proposal is that the Interstate Commerce Commission be given power to approve or disapprove of stock transfers.

Our Business Civilization, by James Truslow Adams (Albert and Charles Boni, pp. ix, 306), and *Adventurous America,* by Edwin Mims (Charles Scribner's Sons, pp. 304), are both concerned with certain aspects of contemporary life and thought in this country, but from strikingly different points of view. The divergence of attitude on the part of the respective authors is the more marked in that frequently they both make use of the same illustrations, only to prove opposite points. Mr. Mims preaches "the synthesis of new knowledge and old faith." While descrying complacency, he protests the current philosophy of futility and disillusionment. In applying the adventuring spirit of the frontiersman to modern problems, the author believes a solution will be found. "A fighting chance is all that a brave man asks. . . . . He may live on Main Street or in Zenith City, and be constantly associated with Babbitts, but he will coöperate with others in establishing community centers and art galleries, parks, and symphony orchestras." In his naïve haste to defend American culture, the author unwittingly reveals its inadequacies more thoroughly and more pathetically than does the studied criticism of J. T. Adams. This author sets out with the avowed intention of finding fault. He does so with polite suavity that is irritating rather than convincing. The essays include topics such as: A Business Man's Civilization, Hoover and Law Observance, and The Cost of Prosperity. There is

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no great profundity or originality displayed, but there is sufficient penetration and analysis to make for stimulating reading.—E. P. H.

The well-known Renaissance and Dante scholar and politicist Francesco Ercole has brought together various essays dealing with the political thought of Dante, in two volumes recently published by Edizioni "Alpes," Milano, under the title *Il Pensiero Politico Di Dante* (pp. 372, 412). The essays form part of that passionate endeavor of Italian patriots in recent years to emphasize the national aspects in Dante's thought, in order to make this greatest of Italian poets a full-fledged member of that greater community of profound thinkers who together constitute the national tradition so dear to all those who wish to rid themselves of equalitarian democracy, the rule of the mass. Consequently this work leads you directly into the heated discussions which have taken place among Italian nationalist intellectuals regarding the nature of this "tradition" itself. Appropriately enough, the first volume begins with an essay on *L'unita politica di nazione Italiana é l'Impero nel pensiero di Dante.* Here, as throughout the book, the main arguments are derived from a judicious use of citations from all Dante's writing, not only from the *De Monarchia,* but rather primarily from the *Divina Comedia.* Consequently, the book makes very attractive and stimulating reading from the literary point of view. For Francesco Ercole is not only a fine scholar, but a subtle mind as well.—C. J. F.

Die Dynamik der Theoretischen Nationaloekonomie, by Rudolf Streller (Tübingen: Mohr, pp. 225), which supplements an earlier study by the same author, *Statik und Dynamik in der theoretischen Nationaloekonomie,* is representative of the present interest in Germany in certain aspects of the pure theory of economics. Very little attempt is made to study particular "dynamic" problems, but rather is the substance methodological and philosophical. Economic statics is defined as "an economic concept from which we abstract the element of time which may intervene between particular economic processes." Dynamics is an "economic concept in which the element of time plays an essential part." Confining himself to the latter concept, the author discusses its nature and the limitations which beset its use in the field of theory. Classical economics is described as essentially static, although the Austrians were the first to recognize clearly the implications of this fact. Among modern economists, Marshall, he thinks,

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has done more than any one else in the handling of dynamic problems. Dr. Streller's critical appraisal of modern economic theory appears to be somewhat commonplace.—E.S.M.

Kirby Page edits the volume entitled *A New Economic Order* published by Harcourt, Brace and Company (pp. 387). The book is divided into two parts, the first dealing with rival world movements, and the second with "ways of transforming the present competitive system into a coöperative order." Capitalism, fascism, communism, and socialism are argued pro and con. Such topics are discussed as the minimum wage, social insurance, workers' education, consumers' coöperation, public ownership, the public control of credit, etc. To deal at all adequately with such subjects within the limits dictated by the space allotted is of course impossible. The book is valuable only in the degree to which it indicates the existence of certain problems and the diversity of viewpoints that may be taken toward them. The result is a suggestive survey. Among the contributors are E. R. A. Seligman, H. R. Mussey, A. F. Guidi, W. Y. Elliott, P. H. Douglas, H. W. Laidler, and Norman Thomas.—E. P. H.

The sixth volume of the *Cambridge Medieval History* (Macmillan, pp. xli, 1047) bears the title "Victory of the Papacy" and is devoted mainly to the thirteenth century. Besides the usual narrative chapters on the principal countries of Europe, it contains essays on many aspects of mediæval civilization which reach their climax in this period. Such chapters, written for the most part by English historians of distinction, give a wider interest to an indispensable work of reference. A student of political science will find for his purposes, besides much excellent constitutional history, chapters on commerce and town life, political theory and religious doctrine, ecclesiastical organization, and the universities of the Middle Ages. A stimulating introduction by Mr. Previté-Orton places the thirteenth century in its relation to the ages which precede and follow.—C. H. H.

The Americanization of Carl Schurz, by Chester V. Easum (University of Chicago Press, pp. xi, 374), is a carefully written biographical sketch dealing with Schurz's life during the ten-year period between his arrival in America as an "outlawed immigrant" and his return to Europe as American minister to Spain. The author's purpose is to show how "the 'brilliant German' was made into a devoted Ameri-

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can citizen, and his influence upon public affairs even while the process of his Americanization was going on." The book bears the marks of scholarly research and originality and is interesting reading.

Recent studies issued by the National Industrial Conference Board deal with the *Cost of Government in the United States 1927-28* (pp. 149), *The Shifting and Effects of the Federal Corporation Income Tax* (pp. 251, 175), and *State Income Taxes* (pp. 121, 200). The expenditure of the national government, the states, and local governments all increased in 1927 over 1926. The national debt decreased, while state and local debt increased. Twenty states now have an income tax, five new laws being passed in 1929. The most important financial results have been in Massachusetts, Wisconsin, Delaware, and New York.

Two recent studies on local government in the United States are *Counties in Transition* (pp. 255), by Frank W. Hoffer, published by the University of Virginia Institute for Research in the Social Sciences, and *Rural Municipalities* (pp. 343), by Theodore B. Manny, published by the Century Company. The former deals with county public and private welfare administration in Virginia. The latter is a more general survey of rural local government, with reference to its social and economic background and proposals for reorganization.

A Survey of the Law Concerning Dead Human Bodies (pp. 199), by George H. Weinmann, has been issued by the National Research Council, under the auspices of its committee on medico-legal problems. It discusses legal questions as to what is a "dead body," property rights in such bodies, coroner's inquests, autopsies, and regulations as to disposition and exhumation, based on an examination of statutes and judicial decisions.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY EARL W. CRECRAFT
University of Akron

POLITICAL PHILOSOPHY AND PSYCHOLOGY

Norman Woods Beck; A.B., Chicago, 1923. A Group of Political Scientists as Inventors. *Chicago.*

Philip W. Buck; A.B., Idaho, 1923. The Relations Between Political and Economic Thought. *California.*

**Jesse Thomas Carpenter;* A.B., Duke, 1920; A.M., Iowa, 1925. Sectional Minorities and the Federal Constitution in the Ante-bellum South; A Study in Southern Political Thought. *Harvard.*

H. L. Chao. Changing Conceptions of Sovereignty. *Johns Hopkins.*

Hyman E. Cohen; Ph.B., Chicago, 1928. History of the Theory of Sovereignty since 1900. *Chicago.*

Edward F. Dow; S.B., Bowdoin, 1925; A.M., Harvard, 1926. The Present Value of the City State Ideal. *Harvard.*

Clifford E. Garwick; A.B., Ohio State, 1928; A.M., *ibid.*, 1929. Internationalism in American Political Theory. *Illinois.*

Grace Givin; A.B., Kansas, 1914; S.D., *ibid.*, 1916. Louise DeKoven Bowen as a Political Leader. *Chicago.*

Mary Z. Johnson; Ph.B., Chicago, 1924. Development of Democratic Theory since 1848. *Chicago.*

James C. King; Measurable Conditions Favorable to the Development of Nationality. *Chicago.*

Marion W. Lewis; A.B., Rockford, 1928. Jane Addams; A Study in Leadership. *Chicago.*

Floyd L. Mulkey; A.B., Baker, 1925. Recent Theories of Representative Government. *Chicago.*

Frances Newborg; A.B., Wellesley, 1927. Political Ideas in American Fiction. *Chicago.*

Paul A. Palmer; A.B., Bowdoin, 1927; A.M., Harvard, 1928. Concept of Public Opinion in the History of Political Thought. *Harvard.*

Robert Phillips; A.B., Albion, 1916; A.M., Michigan, 1917. The Place of the

[1] Similar lists have been printed in the *Review* as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929).

Asterisks indicate dissertations completed during the current year.

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Party in American Political Theory. *Michigan.*

Lawrence Preuss; A.B., Michigan, 1927; A.M., *ibid.,* 1929. The Theoretical Basis of Diplomatic Immunities. *Michigan.*

**Irma H. Reed;* A.B., Radcliffe, 1924. The Political Theory of the Enlightened Despots. *Radcliffe.*

Pearl Robertson; Ph.B., Chicago, 1923; A.M., *ibid.,* 1925. Grover Cleveland as a Political Leader. *Chicago.*

Helen M. Rocca; A.B., California, 1919; A.M., *ibid.,* 1921. The Political Ideas of Benjamin Disraeli. *Columbia.*

Anna Elizabeth Roth; Ph.B., Syracuse, 1909; A.M., Radcliffe, 1926. Virtual Representation. *Radcliffe.*

Elmer E. Schattschneider; A.B., Wisconsin, 1915; A.M., Pittsburgh, 1927. The Economic Basis of the Changing Democratic Attitude Toward the Tariff. *Columbia.*

Robert C. Stevenson; A.B., Occidental, 1925; A.M., Columbia, 1926. Theories of War and Peace. *California.*

Ruth E. Wright; A.B., Middlebury, 1923; A.M., Vermont, 1929. The Nationalism of Alexander Hamilton and of Theodore Roosevelt; a Comparative Study. *Columbia.*

UNITED STATES GOVERNMENT AND POLITICS AND CONSTITUTIONAL LAW

Norman Alexander; A.B., North Dakota, 1919; A.M., *ibid.,* 1920. Rights of Aliens under the Federal Constitution. *Columbia.*

F. E. Ballard; A.B., Millsap, 1924; A.M., Vanderbilt, 1926. Political Theory in the Supreme Court Opinions of John Marshall. *Iowa.*

R. R. Barlow; A.M., Illinois, 1929. The Problem of Public Information in the National Government. *Illinois.*

George C. S. Benson; A.B., Pomona, 1928; A.M., Illinois, 1929; Political and Governmental Aspects of Colorado River Development. *Harvard.*

Eleanor Bontecou; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

M. E. Brake; Ph.B., Chicago, 1920; J.D., *ibid.,* 1920. Criminal Law Enforcement by Injunction under Federal Legislation. *Chicago.*

Paul Herman Buck; A.B., Ohio State, 1921; A.M., *ibid.,* 1922. Party Divisions in the Van Buren and Tyler Administrations. *Harvard.*

**Lula Cain;* A.B., Illinois, 1922; A.M., Chicago, 1924. Minor Wars and Interventions of the United States. *Chicago.*

Keith Clark; Ph.B., Hamline, 1898; A.M., Minnesota, 1922. The United States and International Unions. *Columbia.*

Lawrence Cramer; A.B., Wisconsin, 1923; A.M., Columbia, 1926. Advisory Committees in Relation to Federal Administration. *Columbia.*

Royden Dangerfield; S.B., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago.*

Charles Edwin Davis; A.B., Texas, 1928; A.M., *ibid.,* 1929. The President's Conception of the Legislative Powers of the President's Office. *Yale.*

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Thomas C. Donnelly; Party Leadership in the United States Senate. *New York University.*

**Donald M. DuShane;* A.B., Wabash, 1927; A.M., Columbia, 1930. American Naval Policy. *Columbia.*

**Hugh L. Elsbree;* A.B., Harvard, 1925; A.M., *ibid.,* 1929. The Regulation of Interstate Commerce in the Electric Power Industry. *Harvard.*

Brooks Emeny; A.B., Princeton, 1924. The Monroe Doctrine since the Great War. *Yale.*

A. J. Fahy. Powers of the Houses of Congress with Regard to Election, Exclusion, and Expulsion of Members. *Johns Hopkins.*

H. Schuyler Foster; S.B., Dartmouth, 1925. American Attitude toward the European War, 1914-1917. *Chicago.*

Felipe Gamboa; A.B., Oregon, 1926; A.M., *ibid.,* 1927. The Political Policy of the United States in the Philippines. *California.*

Max Geller; A.B., College of City of New York, 1919; LL.B., New York University, 1920; A.M., *ibid.,* 1927. Artificial Persons under the Constitution of the United States. *New York.*

W. Brooke Graves; A.B., Cornell University, 1921; A.M. Pennsylvania, 1923. The Personnel of National Authorities Regulating Business. *Pennsylvania.*

Charles E. Haines; A.B., Colorado; A.M., Columbia, 1927. The Supreme Court and the Anti-Trust Acts. *Harvard.*

William M. Hargrave; A.B., DePauw, 1928; A.M., Iowa, 1929. The Socialist Party and the American Party System. *Iowa.*

Merrill J. Hewitt; A.B., Cornell College, 1927. American Military Interventions in China. *Northwestern.*

Laurence V. Howard; A.B., Southern College, 1920. The Method of Settling International Controversies by the United States. *Chicago.*

Peyton Hurt; A.B., Idaho, 1926; A.M., California, 1929. The Know-Nothing Party. *California.*

Arthur James; A.B., Lebanon, 1911; A.M., Cincinnati, 1913; B.D., Yale, 1915. American Rule in Porto Rico. *Columbia.*

Grace Johnson; A.B., Wells, 1919; A.M., George Washington, 1923. The Annexation of Hawaii. *American University.*

Howard P. Jones; B. Litt., Columbia, 1921. Contempt of Court and the Freedom of the Press. *Columbia.*

Joseph Kise; A.B., St. Olaf, 1916; A.M., Harvard, 1928. The Constitutional Doctrines of Harlan F. Stone. *Harvard.*

John D. Larkin; A.B., Berea, 1923; A.M., Chicago, 1925. The Administration of the Flexible Tariff. *Harvard.*

Joseph T. Law; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations on the Delegation of Legislative Power. *Wisconsin.*

Albert Lepawsky; Ph.B., Chicago, 1927. Courts in the Metropolitan Region of Chicago. *Chicago.*

Raymond Leydig; A.B., Kansas, 1925; A.M., Columbia, 1928. Federal Control of Radio. *Columbia.*

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Nelson Bernard Lisansky; A.B., Johns Hopkins, 1927. The Development of Law of Searches and Seizures. *Johns Hopkins.*

Stuart Alexander MacCorkle; A.B., Washington and Lee, 1925; A.M., Virginia, 1928. Our Recognition Policy toward Mexico. *Johns Hopkins.*

Vera MacLaren; A.B., Southern California, 1924; A.M., Northwestern, 1929. The Doctrine of Public Interest. *Northwestern.*

Evalyn Armistead Maurer; A.B., Northwestern, 1927; A.M., *ibid.,* 1928. Governmental Regulation of the Interstate Distribution of Public Utility Products. *Northwestern.*

James D. McGill; A.B., Oberlin, 1920; A.M., *ibid.,* 1922. Religious Liberty and Equality in American Constitutional Law. *Cornell.*

Lionel V. Murphy; A.B., Oklahoma, 1926; A.M., *ibid.,* 1929. The Republican Party in the South. *Illinois.*

James R. Pennock; A.B., Swarthmore, 1927; A.M., Harvard, 1928. Regionalism in American National Government. *Harvard.*

**Ernest R. Perkins;* A.B., Wesleyan, 1917; A.M., Clark, 1921. The Development of the Colonial Policies of the United States. *Clark.*

S. Lyle Post; A.B., University of California at Los Angeles, 1925. Methods of Coördination in American National Administration. *California.*

Rex M. Potterf; A.B., Indiana, 1918; A.M., Columbia, 1923, and Indiana, 1926. The Treaty of Versailles before the United States Senate. *Wisconsin.*

Charles Percy Powell; A.B., North Carolina, 1923; A.M., *ibid.,* 1925. Treatment of Alien Enemy Property in the Hands of the Custodian during the World War. *Johns Hopkins.*

Allen Thomas Price; Ph.B., Denison, 1916; A.M., Chicago, 1922. The Influence of the American Missionary Movement on American Diplomacy in China. *Harvard.*

Spencer Reed; Ph.B., Lafayette, 1918; A.M., American, 1928. The Federalist Party—1789-1823. *American University.*

Helen R. Rosenberg; A.B., California, 1923; A.M., *ibid.,* 1924. The Vice-President of the United States. *California.*

Leon Sachs. The Writ of Certiorari in Administrative Law. *Johns Hopkins.*

Wallace Sayre. Robert M. LaFollette—A Study in Political Leadership. *New York University.*

Carroll K. Shaw; A.B., Oberlin, 1928; A.M., Syracuse, 1929. Administrative Areas as Used by the United States Government. *Illinois.*

Max A. Shepard; A.B., Ohio State, 1927; A.M., Harvard, 1928. The Development of the Idea of the Fundamental Law of the Constitution. *Harvard.*

George A. Shipman; A.B., Wesleyan, 1925; A.M., ibid., 1926. The Constitutional Doctrines of Justice Stephen J. Field. *Cornell.*

Theodore Skinner. Administrative Discretion as it Affects Constitutional Rights. *New York University.*

Norman James Small; A.B., Johns Hopkins, 1927. Some Presidential Interpretations of the Presidency. *Johns Hopkins.*

**Ivan M. Stone;* A.B., Nebraska, 1923; A.M., Illinois, 1926. The Relations of Petroleum to American Foreign Policy. *Illinois.*

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Camden Strain; A.B., Washburn, 1925; A.M., Wisconsin, 1926. Finality of Extra-Judicial Interpretation of Constitutional Questions. *Wisconsin.*

I. H. Su; A.B., Wisconsin, 1926; A.M., Columbia, 1927. The Make-up of American Cabinets. *Columbia.*

Harold Taccher; A.B., Illinois, 1925; A.M., *ibid.*, 1926. Industrialization and the Consular Service. *Illinois.*

Stanley Trefil; B.S., Northwestern, 1929. State Police Power and Interstate Commerce. *Northwestern.*

**Eleanor Tupper;* A.B., Brown, 1926; A.M., Clark, 1927. American Sentiment toward Japan, 1904-1924. *Clark.*

Fred Ames Weller; A.B., State College of Washington, 1925; J.D., Stanford, 1929. Opposition Politics. *Stanford.*

**Paak S. Wu;* A.B., Linghao University, Canton, 1926. The Federal Inspectorate. *Chicago.*

STATE AND LOCAL GOVERNMENT IN THE UNITED STATES

John R. Abersold; A.B., Pennsylvania, 1922; LL.B., *ibid.*, 1925; A.M., *ibid.*, 1929. Commercial Arbitration in Pennsylvania. *Pennsylvania.*

Frederick L. Bird; A.B., Lafayette, 1913; A.M., Columbia, 1921. Municipal Light and Power Plants in New York State. *Columbia.*

* *William L. Bradshaw;* S. B., Missouri, 1917; A.M., *ibid.*, 1924. The Missouri County Court: A Study of the Organization and Functions of the County Board of Supervisors in Missouri. *Iowa.*

Dennis DeW. Brane; A.B., Otterbein, 1921; A.M., Harvard, 1926; Ph.D., *ibid.*, 1930. Public Contracts and State Succession. *Harvard.*

Helen Breese; A.B., Bucknell, 1927; A.M., *ibid.*, 1928. Public Service Commissions; The Attachment of Jurisdiction. *Syracuse.*

Helen Elizabeth Brennan; A.B., Radcliffe, 1920; A.M., Bryn Mawr, 1921. The Development of Separate Departments of Government in Massachusetts, 1628-1780. *Radcliffe.*

Roy Edward Brown; S.B., Iowa State Teachers' College, 1923; A.M., Iowa, 1928. Organization and Administration of Fire Departments in Iowa. *Iowa.*

**Daniel B. Carroll;* A.B., Illinois, 1915. The Unicameral Legislature of Vermont. *Wisconsin.*

Keith Carter; A.B., Randolph-Macon, 1907; A.M., Columbia, 1925. The Development of Criminal Law by Judicial Decision in Texas, 1890-1928. *Columbia.*

J. Murdock Dawley; A.B., Minnesota; LL.B., *ibid.*, A.M., *ibid.*, 1930. The Power of the Governor to Appoint and Remove State and Local Officers. *Minnesota.*

Melvin G. de Chazeau; A.B., Washington, 1924; A.M., *ibid.*, 1925; A.M., Harvard, 1927; Ph.D., *ibid.*, 1930. Some Chapters in the Regulation of the Electric Industry in Massachusetts. *Harvard.*

Earl Howard De Long; B.S., Northwestern, 1929; A.M., Northwestern, 1930. The State-wide Coördination of Police Authorities in the United States. *Northwestern.*

* *Lowry A. Doran;* A.B., Chicago, 1910; A.M., *ibid.*, 1917. The Party System in Maine. *Chicago.*

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Harold M. Door; A.B., Michigan, 1923; A.M., *ibid.*, 1928. The Constitutional History of Michigan. *Michigan.*

William H. Edwards; A.B., Ohio State, 1923; A.M., *ibid.*, 1923. The Position of the Governor in Recent Administrative Reorganization in the States. *Ohio State.*

John North Edy; S.B., Missouri, 1925; A.M., California, 1926. Manual of Municipal Management. *Stanford.*

Rowland A. Egger; A.B., Southwestern, 1926; A.M., S.M.U., 1927. The Federated Region as a Solution of the Metropolitan Problem. *Michigan.*

Lavinia Engle; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins.*

James W. Errant; S.B., Illinois, 1923. Public Employee Organizations in Chicago. *Chicago.*

Russell Ewing; A.B., Minnesota, 1923; A.M., Columbia, 1924. The Problem of Personnel under City Management. *Columbia.*

Sonya Forthal; A.B., Wisconsin, 1922; A.M., *ibid.*, 1923. An Analysis of the Functions of Precinct Committeemen. *Chicago.*

Plato Lee Gettys; A.B., Oklahoma, 1919; A.M., *ibid.*, 1927. Torts and Liabilities of Cities. *Stanford.*

**George A. Graham;* A.B., Monmouth, 1926; A.M., Illinois, 1927. Special Assessments in Detroit. *Illinois.*

**Carl Green;* A.B., Eastern Illinois State Teachers' College, 1924; A.M., Illinois, 1925. School Legislation in Illinois and its Interpretation by the Courts. *Illinois.*

Victor Hunt Harding; LL.B., Syracuse, 1907; A.B., Stanford, 1925. Non-Voting in California. *Stanford.*

Freeman H. Hart; A.B., Washington and Lee, 1912; A.M., *ibid.*, 1917; A.M., Harvard, 1922. Federalism in Virginia, 1783-88, with Special Reference to the Valley. *Harvard.*

Randolph O. Huus; A.B., St. Olaf's, 1916; A.M., Columbia, 1924. Municipal Playgrounds. *Syracuse.*

Rex U. Johnson. The Civil Service of the State of Ohio. *Ohio State.*

Violet V. Johnson; A.B., Hamline, 1928; A.M., Minnesota, 1929. Occupational Opportunities for College and Professional School Graduates in the Public Service. *Minnesota.*

Harley Walter Kidder; A.B., Illinois, 1929; A.M., *ibid.*, 1929. The Prohibition Party of Vermont: A Study in Quantitative Analysis and Interpretation. *Illinois.*

J. Donald Kingsley. Legislative Appointment in New York. *Syracuse.*

W. Rolland Maddox; A.B., Ohio Wesleyan, 1923; A.M., Cincinnati, 1924. Municipal Home Rule in Ohio; an Evaluation. *Michigan.*

**John W. Manning;* A.B., Georgetown College, 1921; A.M., Missouri, 1926. City Planning, Zoning, and Beautifying in Iowa. *Iowa.*

Roscoe C. Martin; A.B., Texas, 1924; A.M., *ibid.*, 1925. The Populist Movement in Texas. *Chicago.*

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Charles E. Martz; A.B., Yale, 1915; A.M., *ibid.*, 1917. Ohio Politics from 1876 to 1900. *Harvard.*

**David M. Maynard;* S.B., Princeton, 1922; A.M., Columbia, 1925. Operation of the Referendum in Chicago. *Chicago.*

George H. McCaffrey; A.B., Harvard, 1912; A.M., *ibid.*, 1913. The Government of Metropolitan Boston. *Harvard.*

Joseph McGoldrick; A.B., Columbia, 1923; A.M., *ibid.*, 1923. Municipal Home Rule, 1916-1928. *Columbia.*

C. McKensie; A.B., Dartmouth, 1920; A.M., Columbia, 1921. The New Hampshire Town. *Columbia.*

Blake E. Nicholson; LL.B., George Washington, 1923; LL.M., *ibid.*, 1925; B.S., Pennsylvania, 1926. The Collection of Local Taxes in Pennsylvania. *Pennsylvania.*

Spencer D. Parratt; A.B., Utah, 1924. Organization of Governments in the Regional Area of Chicago. *Chicago.*

**Joseph Pois;* A.B., Wisconsin, 1926; A.M., Chicago, 1927. The Recruitment of Police. *Chicago.*

Leland Pritchard. Highway Administration in New York. *Syracuse.*

Charles James Rohr. The Executive and the Administration of the Maryland State Government. *Johns Hopkins.*

Burton F. Scott; A.B., Washington, 1919. History of Police in Chicago. *Chicago.*

Carlton C. Sims; S.B., Peabody, 1917; A.M., *ibid.*, 1922. The Tennessee County. *Chicago.*

Royal S. Steiner; A.B., Beloit, 1915; A.M., Harvard, 1921. State Control of Local Finance in Massachusetts. *Harvard.*

Edwin O. Stene; A.M., Minnesota, 1924; A.M., *ibid.*, 1929. Provisions for Public Employees Disabled in the Course of Duty, and for Their Dependents in Case of Death. *Minnesota.*

Hubert Stone; A.B., DePauw, 1925. Town Government in New York State. *Columbia.*

K. P. Vinsel; A.B., Grinnell, 1921; A.M., Mississippi, 1927. Legal Aspects of Municipal Corporations in Mississippi. *Iowa.*

Earl E. Warner. The Activities of Citizen Organizations in the State Administration of Ohio. *Ohio State.*

John P. Wright; S.B., Alabama Polytechnic Institute, 1922. The Workings of the Quadrennial Legislative System in the State of Alabama. *Harvard.*

Martha Jean Ziegler; A.B., Illinois, 1928; A.M., Illinois, 1929. State Investigating Commissions in Illinois Since 1900: Their Procedure and Legislative Influence. *Northwestern.*

FOREIGN AND COMPARATIVE GOVERNMENT

Morley J. Ayearst; A.B., University of Toronto, 1921; A.M., *ibid.*, 1923. Le Parti Rouge in Quebec Province. *Princeton.*

Eric A. Beecroft; A.B., Toronto, 1925; A.M., *ibid.*, 1927. The Court of Conciliation and Arbitration in Australia. *Yale.*

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E. C. Bellquist; A.B., California, 1927; A.M., *ibid.*, 1928. The Development of Parliamentary Government in Sweden. *California.*

Catherine Evangeline Boyd; A.M., Radcliffe, 1926; A.M., *ibid.*, 1929. The Development of the Ordonnance Royale in France to the End of the 16th Century. *Radcliffe.*

Chun-Ming Chang; A.B., Illinois, 1926; A.M., *ibid.*, 1927. The Rôle of the United States House of Representatives in Foreign Policy. *Yale.*

Daniel S. K. Chang; A.B., St. John's University, 1917; A.M., Columbia, 1921. Parliament and British Policy Toward China. *Columbia.*

Ducksо Chang; A.B., Waseda, Japan, 1916; A.M., Columbia, 1925. Methods of Promoting Industrial Peace in Great Britain. *Columbia.*

Seymour C. Y. Cheng; A.B., Peking University, 1917; A.M., Columbia, 1921. Schemes for British Imperial Federation. *Columbia.*

Yuan-Chen Cheo; A.B., San José State Teachers' College, 1928; A.M., Stanford, 1929. A proposed Form of a Mayor-Council-Manager Government in Kinkiang, Kiangsi, China. *Stanford.*

Gerda Richards Crosby; A.B., Smith, 1922; A.M., Radcliffe, 1923. The Transformation of the Tory Party after 1780. *Radcliffe.*

**Hartley W. Cross;* A.B., Springfield, 1923; A.M., Clark, 1924. The Status of the British Dominions. *Clark.*

E. DeHass; A.B., Hunter, 1923, A.M., Columbia, 1925. The Bail System in England. *Columbia.*

A. E. Elliott; A.B., Drake, 1915; A.M., College of Missions. Latin American Attitude toward the Pan-American Union. *Columbia.*

Margaret Bonin Fox; A.B., Michigan, 1925. The Development and Use of Questions in the House of Commons. *Michigan.*

Virginia Elizabeth Fox; A.B., Stanford, 1927; A.M., *ibid.*, 1928. Origins of the Third Internationale. *Stanford.*

Sooren Frankian; A.B., California, 1924; A.M., *ibid.*, 1926. British Foreign Policies and the League of Nations. *California.*

Frederic W. Ganzert; A.B., California, 1926; A.M., *ibid.*, 1927. Brazil and the Pacific Settlement of International Disputes. *California.*

C. Grove Haines; A.B., Ursinus College, 1927; A.M., Clark, 1928. Italian Irredentism. *Clark.*

Paul Heaton; A.B., Minnesota, 1924; A.M., *ibid.*, 1925. Extraterritoriality in China. *Chicago.*

Sylvester Hemleben; A.B., Iowa, 1927; A.M., *ibid.*, 1928. The British Dominions in the League of Nations. *Columbia.*

Charles Roger Hicks; A.B., Clark, 1915; A.M., Stanford, 1922. The History of Foreign Interests in the Shantung and Liaotung Peninsulas. *Clark.*

**Yung-Chi Hoe;* A.B., Beloit, 1926; A.M., Harvard, 1927. Mixed Monarchy: A Study of Political Thought from the Mid-Sixteenth to the Mid-Seventeenth Century, Chiefly in France and England. *Harvard.*

Pendleton Howard; A.B., Columbia, 1921; A.M., *ibid.*, 1924. Public Prosecution in England. *Columbia.*

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